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UNITED STATES DISTRICT COURT

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WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA)

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)

vs.

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Rochester, New York

JOHN ERMIN AND SCOTT BARNES) December 27, 2023

7

Defendants. 11:00 a.m.

- - - - - X

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CONTINUATION OF DETENTION HEARING

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TRANSCRIPT OF PROCEEDINGS

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BEFORE THE HONORABLE ELIZABETH A. WOLFORD

12

UNITED STATES DISTRICT JUDGE

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25

100 State Street**Rochester, New York 14614**

P R O C E E D I N G
* * *

11:27:40 4 THE CLERK: On the record, United States
11:27:40 5 versus Barnes 23MR551, and United States versus Ermin,
11:27:40 6 23MR552. We're here for oral argument.
11:27:40 7 Counsel, please state your name and who you represent.
11:27:40 8 MR. TRIPI: Joseph Tripi and paralegal Karen
11:27:40 9 Champoux for the United States.
11:27:40 10 MR. COTTER: David P. Cotter appearing with
11:27:40 11 Scott Barnes.
11:27:40 12 THE COURT: Good morning.
11:27:41 13 MR. MUSCATO: Good morning, your Honor.
11:27:41 14 George Muscato, and I have John Ermin with me.
11:27:41 15 THE COURT: And we have Officer McCray here
11:27:41 16 from probation.
11:27:41 17 So we're here for the continuation of the
11:27:41 18 appeal of Judge Schroeder's orders that the two
11:27:41 19 defendants be released. We have both defendants here
11:27:41 20 and present because I understand there is some video
11:27:41 21 evidence that the government started to play during Mr.
11:27:41 22 Ermin's appearance, and it's also relevant to Mr.
11:27:41 23 Barnes.
11:27:41 24 MR. TRIPI: Yes. And I believe during Mr.
11:27:41 25 Barnes' initial hearing in front of you, so his second

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2 portion of detention hearings that he has had, the first
3 one would be in front of the Magistrate, we referenced
4 that video and would obtain it and provide it. The
5 Ermin hearing was the next day, obviously, by that time
6 we had obtained that video, and Mr. Barnes was not
7 present, so at the conclusion of some of the proffering
8 of Mr. Ermin's hearing, we thought it would be good to
9 have them here today together and that brings us here
10 today. I don't anticipate Mr. -- I'm going to handle
11 both proffers. I would propose I proffer to both at
12 once and each if that is the best way to do this.

13 MR. COTTER: I have no objection.

14 THE COURT: And Mr. Muscato?

15 MR. MUSCATO: No.

16 THE COURT: All right. Go ahead, Mr. Tripi.

17 MR. TRIPI: Thank you, your Honor. Your
18 Honor, very briefly, before I get into the videos, I
19 wanted to circle back to something I think applies to
20 each defendant, and it's to give the Court one more
21 example of the national reach of the Outlaws
22 headquartered in Buffalo to include Mr. Ermin. Just by
23 way of background, on or about April 29th, 2017, in
24 Leesburg, Florida, there was a Kingsmen motorcycle
25 member that was killed.

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2 THE COURT: 2017?

3 MR. COTTER: So while your RICO case is
4 still going, there were four Outlaws charged with the
5 shooting death of a Kingsmen member at a gas station and
6 several other Kingsmen that were there. And in sum and
7 substance, it related to Outlaws wanting Kingsmen to
8 surrender their patches. And I think the Court is well
9 versed in the importance of patches. There was some
10 resistance to that and an Outlaw shot and killed a
11 Kingsmen while another Kingsmen retreated into the gas
12 station and returned fire towards the Outlaws. Stemming
13 from there, the attorney general in Florida charged four
14 Outlaws in connection with the murder of the Kingsman.
15 The Kingsman's name was Gutter Donovan. Nickname
16 "Gutter" and last name Donovan. And this is all readily
17 available and publically reported information at this
18 point.

19 Now, stemming from there, on August 11,
20 2019, fast forward after the Kingsmen trial that you
21 conducted in 2018, August 11 in 2019, there were five
22 Kingsmen who were stopped attempting to enter Canada and
23 returned to the United States at the Niagara Falls
24 Bridge, Rainbow Bridge, I believe it was. And those
25 five Kingsmen have ascended to leadership positions in

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2 the wake or absence of Mr. Pirk and Mr. Enix. If I had
3 the photos of them, you probably would recognize some of
4 them among the dozens at the national party. In any
5 event, that was August 11, 2019. Now, in addition to
6 the Outlaws Buffalo clubhouse, there is a Niagara Falls
7 chapter clubhouse. And so during the search of,
8 ultimately, what happens to that case down in Florida is
9 the Kingsmen, who were witness to the crime, to the
10 murder of their fellow member, start giving different
11 statements. Ultimately, on December 20th, 2019, the
12 state attorney, and this is publically reported out of
13 Leesburg, Florida, the state attorney dismissed the
14 charges against those four Outlaws and stated, in sum
15 and substance, it was a result of the witnesses not
16 being credible, changing their story, et cetera. That
17 is the background.

18 That dismissal happens a little over a month
19 after these high-ranking Kingsmen are known to be in the
20 Niagara Falls area.

21 THE COURT: These aren't local Kingsmen?

22 MR. TRIPI: Correct.

23 THE COURT: And these are from -- Leesburg
24 is where Mr. Pirk resided?

25 MR. TRIPI: Right.

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2 THE COURT: And with that context, in
3 searching, I believe, Mr. Ermin's residence, law
4 enforcement -- sorry, this was in the clubhouse. It
5 appears law enforcement found what on the surface
6 appears to be a Christmas card, but when you read the
7 Christmas card. It has reference to this case that I'm
8 talking about. So I'm going to ask Ms. Champoux to pull
9 that up for the Court. It's going to be for counsel's
10 reference, exhibit 15. So on the face of it it is a
11 Christmas card found in the Buffalo chapter clubhouse.
12 The next shown, the Court will be able to read that, for
13 record purposes, I'll read the printed portion, not the
14 pre-printed holiday portion. Addressed to Tommy O, 1
15 percent. "What's up my brother? I hope you're well.
16 As for me, I'm just peachy, hahaha. We are all standing
17 strong. Depos just finished of the three Kingsmen
18 members. So things look good for us, we believe. I
19 understand some folks want to run my name through the
20 mud. I'm telling you my brother, Miquel played us all
21 in Florida, most important me. He playing one and
22 dutch."

23 I want to focus on "depos finished in the
24 three Kingsmen, so things look good for us, we believe,"
25 and assess that relates to obtaining statements that

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2 results in the changed stories. So it says "We are all
3 standing strong. Depos just finished of the three
4 Kingsmen members, so things look good for us, we
5 believe." So that is an update as to that case, we
6 believe. And it is just another thing that shows the
7 Court that what happens in one state is directly
8 impacted by and reported to Mr. Ermin as national as a
9 leader of the organization.

10 THE COURT: Is this exhibit in this binder?

11 MR. TRIPI: It should be under the 15
12 series, your Honor. Law enforcement didn't find an
13 envelope that I'm aware of, at this point, to see where
14 it was mailed from, et cetera. But that is that
15 sequence of events related to a murder that happened
16 while your case was pending here, there was a murder
17 down in Florida, so those hostilities between those
18 Kingsmen and Outlaws that you were hearing about during
19 the trial conducted before your Honor were certainly
20 known and they had nationwide ramifications.

21 Now that is a good segue into --

22 THE COURT: Are you going to get to the
23 relevance of the stop in Canada?

24 MR. TRIPI: We know that was documented they
25 were stopped, had weapons and returned to the United

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2 States, and all identified. And that is how I'm able to
3 proffer to your Honor they were Kingsmen from Florida.
4 Jack Gallagher, for example, you would recognize a photo
5 of, he was under the baseball team of Mr. Enix at the
6 time. Mr. Jenkins was a member of the baseball team, we
7 he ascended.

8 THE COURT: Is your point there were
9 Kingsmen from out of the area who were in this area
10 shortly before the charges were dismissed in Florida?

11 MR. TRIPI: Yes.

12 THE COURT: Okay. And that is a good segue
13 into the video we are about to see, your Honor, which is
14 going to be exhibit 21, which we began to play and so we
15 will get that queued up.

16 Now, in part, stemming from your trial, what
17 you need to a to know to assess this video, you're a
18 well aware that the Kingsmen had a number of chapters.
19 In part after the trial that was conducted before your
20 Honor which concluded in May of 2018, the Kingsmen
21 factioned, right? So the original Lockport chapter
22 remained, you know, Kingsmen with the emblem you're
23 familiar with. The rest of the local chapters began to
24 have sort of yellow embroidery on their patches, so now
25 they are referred to as yellow jacket Kingsmen. And

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2 that group is now a supporter of the Outlaws. So the
3 video you're about to see involves about 16 Outlaws
4 going into Hilltop Bar, Halligan's Tavern in Lockport,
5 which is now closed. Now, you'll remember, Lockport is
6 that one chapter that is not an Outlaws supporter, they
7 are not the yellow jackets Kingsmen. And so to set this
8 video up, you're going to see about 16 Outlaws enter the
9 bar where an employee of the bar, a cook, is a Lockport
10 chapter Kingsmen member who has been wearing patches
11 unauthorized by the Outlaws. So this is a show of force
12 led by Mr. Barnes who has come in from out of town as a
13 B.B.T. member whose job it is to protect the patch and
14 the territory of the Outlaws. And you're going to see
15 how they spread out, this is on camera one, November 25,
16 2022. And what is with all of the angles, you'll see
17 how Mr. Barnes is last out. So clear, in our view, that
18 he is the highest ranking Outlaw in this scenario.

19 Others that are on the video, so there is going to be
20 four different video angles of the incident involving
21 about 16 members of the Outlaws, each video ranges from
22 approximately eight to nine minutes, and they show, if
23 we just keep it paused for a moment, there is four
24 people in the establishment, these were identified by
25 individuals working on this investigation. There is a

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2 female owner bartending, that is the daughter of the
3 owner, a cook who is the Kingsmen Sergeant-at-Arms of
4 that Lockport chapter, the owner of the establishment
5 and his wife. And the different Outlaws have been
6 identified as Keith Elsaesser, he has been one of the
7 Outlaws watching these detention proceedings who you
8 recognized from sitting in your Kingsmen trial. There
9 is a Joshua Bockman. There is a Eugene Gino Badalato,
10 who is a former Kingsman, who is now an Outlaw. Ryan
11 Selk, former Kingsmen who is now an Outlaw. Joseph
12 "Snowball" Fisher, Corey Benson, who you see is holding
13 a cane. And if you look closely at the bottom of the
14 cane, the bottom of it is a baseball bat. Those types
15 of canes, and I'm air quoting the word "cane," are
16 weapons available on the internet. It's basically a
17 Louisville Slugger with a hooked end at the top making
18 it look like a cane. Eugene Mike Marcacchio, which you
19 will see him prominently in the video, and when I say
20 law enforcement, Homeland Security and FBI assess that
21 he would be the next ranking under Mr. Barnes. His job
22 is he is the one who sits down the Kingsman and gives
23 him a talking to.

24 THE COURT: And that is who?

25 MR. TRIPI: Eugene, goes by Mike, Marcaccio.

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2 Who also has been watching proceedings.

3 COURT REPORTER: Can you spell that for me?

4 MR. TRIPI: M-a-r-c-a-c-c-i-o.

5 THE COURT: You indicated he was present at
6 Mr. Ermin's hearing the other day.

7 MR. TRIPI: He was. David "Spider" Bergman,
8 who is also an individual who frequents Pharaoh's
9 gentlemen's club and his wife works there. Mr. Barnes.
10 Mark Mioducki, M-i-o-d-u-c-k-i, Justin "Dirty Bird"
11 Humphries. And you'll see these Outlaws take various
12 positions in locations all over the establishment. When
13 Marcaccio enters, he walks up to the bar, close to the
14 Kingsman, and shortly thereafter, agents have listened
15 to this over and over again, it might be hard to hear,
16 but Marcaccio states, "What you nervous about?" At that
17 point, around that time, Barnes moves to a position by
18 the entrance to Marcaccio's right standing at a table in
19 proximity watching the interaction between Marcaccio and
20 that Kingsman, Elsaesser, Benson, the individual with
21 the club, move behind Marcaccio, closer to the Kingsman.
22 The Kingsman member walks away from Marcaccio into the
23 kitchen away from the bar. Eventually they go in and
24 grab him out of the kitchen. And then Barnes and Benson
25 are seen standing at the table near the kitchen. After

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2 a short time, Marcaccio says something to Barnes and one
3 of the unidentified Outlaws, the ones I've named are
4 only the ones that are identified thus far.

5 After that, Marcaccio and Benson, they enter
6 the kitchen. Benson will be seen standing in the
7 doorway of the kitchen with Burgman, Badalato and two
8 other Outlaws behind him. At one point, the younger
9 Bachman takes the phone out of the female owner's hand
10 and throws it down on the bar. So in other words he
11 takes her cell phone away. And you'll see that on one
12 of the video clips. Marcaccio points to the Kingsman
13 and tells him to sit at a table. The Kingsman sits
14 against the wall with his back against the wall, while
15 Benson walks up to Marcaccio and Benson sort of hovers
16 around there while Marcaccio is speaking to the
17 Kingsman. At one point, the Kingsman stands up, keeping
18 his back against the wall, and pointed to Benson, seems
19 to be indicating concern about Benson because he has
20 that cane. And Marcaccio claims to the Kingsman that,
21 oh, he just has a bad leg or words to that effect.

22 At that point, Marcaccio moves closer to
23 this Kingsman and puts his finger in the Kingsman's
24 chest or near the Kingsman's chest. Benson also closes
25 the space and moved close to Marcaccio. Essentially,

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2 the Kingsman is trapped against the wall for that moment
3 in time. And Benson moves in closer and appears to
4 touch or say something to the Kingsman, and then the
5 Kingsman, you'll see, I believe, sort of put his arms
6 up, raising his hands, which law enforcement assesses is
7 consistent with him showing he is not a threat, not
8 trying to escalate things. There is some conversation.
9 At one point, I think the Court will hear Marcaccio say
10 words to the effect, "you're barking up the wrong tree.
11 I want you to know we're not coming after you. I'm
12 giving you a fucking break."

13 During the exchange, the male owner who will
14 be a bald individual with sort of glasses on top of his
15 head, is in proximity, and he is surrounded by Badalato,
16 Elsaesser, Burgman and three other Outlaws. During this
17 time frame, the other Bachman and Mr. Barnes have the
18 exits blocked. In other words, in a position where if
19 anyone wanted to leave, they were in a position to stop
20 that activity.

21 Marcaccio then approaches the owner and
22 tells him to relax, everything is fine, they were just
23 passing the Kingsman a message. Marcaccio then assures
24 the owner that it had nothing to do with him or the bar.
25 Then there is an exchange regarding females. Marcaccio

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2 apologizes to the female owner whose phone was taken.
3 And Barnes walks over when everyone is leaving and
4 apologizes to the owners. That is consistent with their
5 focus was the Kingsman, and now that activity is to help
6 ensure that law enforcement is not notified of their
7 show of force. We believe you'll see that on video.

8 THE COURT: Was law enforcement ever
9 notified about this?

10 MR. TRIPI: No. There was no 911 call or
11 anything like that.

12 THE COURT: But, obviously, this came to law
13 enforcement's attention.

14 MR. TRIPI: Eventually, yes.

15 THE COURT: Okay. Where on this screen shot
16 is the cook?

17 MR. TRIPI: So we're looking off screen sort
18 of if you are look towards me, bottom of the screen,
19 there is a bar there and the cook is sitting sort of in
20 the vicinity of where "camera one" is stated on your
21 screen. So there is a doorway to the left, far
22 left-hand side. You'll see a different angle of this
23 that will depict this. There are going to be four
24 different angles. We'll try and show you each of those
25 angles, Judge.

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2 I think with that, it's a good point to
3 start playing the video.

4 Ms. Champoux, if you could let this run.

5 (Video played.)

6 MR. TRIPI: Those three individuals at the
7 top, your Honor, are Outlaws already kind of
8 pre-positioned at this point.

9 For the record, this is camera one and the
10 clip is eight minutes approximately.

11 About the minute 40 second mark, you see Mr.
12 Barnes enter the screen. He is posted up at a table
13 toward the bottom of the screen.

14 The individual with the black hat on at the
15 bottom of the screen, that is Corey Benson. He will be
16 the one with the cane or the club.

17 Now speaking to Mr. Barnes or walking there
18 momentarily is Marcaccio about the three minute mark of
19 the video.

20 At this point, off screen, the Kingsman is
21 in the kitchen, so they are all moving toward the area
22 of the kitchen where he has gone back to.

23 At the 3:40 mark, Marcaccio is now directing
24 the Kingsman where to sit in the bar area.

25 Now Marcaccio is moving and interacting with

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2 the owner.

3 Can we play camera two now, Ms. Champoux?

4 You can play that angle, I'm sorry.

5 (Video played.)

6 This is a 12:33 second clip, also labeled

7 "camera one."

8 The owner just shut the door.

9 Around 3:10 mark, Mr. Barnes entered, the
10 last one.

11 THE COURT: That is the owner there?

12 MR. TRIPI: Yes, and his wife.

13 Notice the Outlaws making sure she is not
14 making a call to the police.

15 I'll pause that. We played to the 10:22
16 mark. Mr. Barnes, last in, last out. Law enforcement
17 assesses that is consistent with his highest rank of
18 those among there and the purpose of the visit.

19 Looks like there were maybe two Pepsis, one
20 beer and a water ordered during that time among 16
21 Outlaws as a prop to fill the bar in. My count could be
22 off, but that was what was transpiring around there.

23 If we could play the next angle.

24 I believe this one will show, you'll see the
25 interaction from this different angle. Actually we're

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2 going to save a little bit of time. This is going to be
3 pretty duplicative of what you saw in the prior video.
4 We'll go to the next angle and you'll be able to see the
5 Kingsman.

6 (Video played.)

7 Can we stop it there. So this is before the
8 bulk of the Outlaws have entered. This is the other
9 angle. The Kingsman is seated at the bar. You see how
10 it sort of wraps around. You see where, the bottom
11 right-hand corner, is there and where the wife is seated
12 there and so there is an entrance off screen to the
13 right where they enter, fill the bar and circle. And
14 behind the -- over the left shoulder of the Kingsman,
15 who is sitting there, there is an entrance to the
16 kitchen. So you'll see him sort of, my word, retreat
17 into there to try and avoid the confrontation that is
18 about to occur. And you'll see on this view, they go in
19 and bring him out and seat him in the location, which is
20 the first location that you saw.

21 We'll play this one, this is a 8:57 second
22 video.

23 (Video played.)

24 I'm fairly certain he is wearing a Kingsmen
25 hat, your Honor.

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2 Can we pause it there a second?

3 You'll notice before they started to lineup
4 to go in the kitchen, Marcaccio had an exchange with
5 Barnes, before the stack starts up. If you want to
6 rewind it, we'll rewind it about 30 seconds.

7 THE COURT: Yeah, would you?

8 MR. TRIPI: Would you rewind it, Ms.
9 Champoux, and we'll play it back from the 2:34 mark.

10 (Video played.)

11 I believe you can see a slight head nod
12 during that exchange by Mr. Barnes.

13 Pause is, please. Pause at the 3:50 mark.
14 I believe that video depicts two exchanges between
15 Marcaccio and Barnes before Marcaccio goes back and
16 retrieves the Kingsman.

17 Please continue the video.

18 (Video continued.)

19 Now at this point in the video, Mr. Barnes
20 goes back by the exit door and there are three Outlaws
21 blocking that exit door. So at this point, all exits
22 are covered.

23 I'm updating my count, four beers, two
24 Pepsis or Coke and a water. And so that is a show of
25 force, we believe, demonstrated for you, Mr. Barnes'

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2 position in the enterprise and that could have gone a
3 very different way. You heard on the video Marcaccio
4 tell the Kingsman, you're barking up the wrong f'ing
5 tree. We're giving you an f'ing break at various points
6 in the video, as I said in my initial remarks.

7 We have another video, it is going to be
8 exhibit 22, where Mr. Barnes is assaulting someone at a
9 bar in New Hampshire.

10 THE COURT: And this is related to the
11 misdemeanor charges that are reflected in the bail
12 report.

13 MR. TRIPI: He was charged with simple
14 assault.

15 THE COURT: And disorderly conduct.

16 MR. TRIPI: And disorderly conduct. Yes,
17 the police report is reflected in Government Exhibit
18 22-A. Then we'll work through some photos, which is
19 marked as Government Exhibit 22-B, but I'll start with
20 the video. And if I could, I'll tee it up a little bit
21 regarding what the video depicts. And this is based
22 upon the investigation conducted by the Eddington Police
23 Department, if I'm pronouncing that correctly, in New
24 Hampshire.

25 There is civilian approached by two Outlaws

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2 initially and advised that he was disrespecting their
3 territory. Law enforcement observed that person was
4 wearing or determined that person had been wearing a
5 shirt that said "Big Red Machine Frosty Balls" and the
6 number "81" on it, which indicated to law enforcement
7 that the person was a Hell's Angel supporter, that would
8 be consistent with disrespecting their turf.

9 The first individual who wasn't assaulted
10 agreed to take off the shirt. The victim who was with
11 the individual wearing the shirt goes outside at one
12 point, and you'll see Mr. Barnes punch that guy in the
13 face. That person was wearing, the victim is wearing a
14 Sin City Cycle shirt, which is also indicating to law
15 enforcement that the victim was a Hell's Angel
16 supporter. So this would be another example consistent
17 with Mr. Barnes' position in the B.B.T., he is defending
18 the patch. I would argue you saw that in the Hilltop
19 Bar video at Lockport. And you'll see that in the video
20 I'm about to play.

21 This appears to be video shot from the DVR
22 system. It's not like they seized the DVR, it's video
23 of video.

24 Go ahead and play it, Ms. Champoux.

25 (Video played.)

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2 For the record, this video 22 is a 5:50
3 video.

4 About the 35 second mark, you see Mr. Barnes
5 walking in. Mr. Barnes walks around the bar, doesn't
6 appear to order anything. Appears other Outlaws made
7 the initial approach and now Mr. Barnes is following
8 walking up towards the table.

9 Pause it for just a moment. Paused at 3:42
10 mark. Just to orient the Court, the victim who had been
11 with the first individual at the table that I referenced
12 who was approached on screen, the victim is outside, I
13 believe, smoking or something like that, so that is
14 where you're seeing Mr. Barnes walk now and he goes
15 outside and that is where you'll see the assault occur.

16 Please continue the video.

17 And that was Mr. Barnes punching the
18 individual in the face at about the 3:50 mark. You'll
19 see the individual run back into the bar.

20 Now I'd like to pull up some photos that
21 were also obtained through that police investigation.
22 You'll see photos of Mr. Barnes' knuckles, the victim's
23 injury, as well as some patches that are on Mr. Barnes'
24 vest at that time. If we could zoom into the photos.
25 Consistent with the video you saw, you saw on the right

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2 hand there is an injury to Mr. Barnes' hand. It seems
3 the skin has been broken inn two locations, which would
4 be around his middle finger knuckle, consistent with the
5 placement of an individual's front teeth.

6 If we go to the bottom right hand corner
7 photo, the injuries to the victim are consistent with
8 the injuries to Mr. Barnes' hand. And you see that the
9 victim's lip was broken open and there is blood there.
10 And then if we can have go to the middle row patches on
11 the right-hand side. You can see clearly he is wearing
12 his Outlaws patches. If we could zoom in on first this
13 Outlaws patch around the stomach area. That says
14 "Outlaws North."

15 You can exit out of that. Go to the patch
16 that is on the left-hand side of the screen in white
17 lettering, lower. It says "blood and honor." And do
18 you see that white sort of that S sort of the white
19 supremacist emblem there. According to an expert
20 familiar with the Outlaws, that when you see that type
21 of patch, that is an indicator of violence. On the
22 other side, you're going to see a bottom right-hand side
23 of our screen, there is going to be a First Blood
24 Northeast patch, again, with that same type of symbolism
25 in the middle of the patch. That is a patch that,

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2 according to experts and investigators working on
3 Outlaws cases, that one gets for defending the club or
4 the patch, fighting against an adversary or
5 non-conforming civilian. That patch is believed to be
6 originated in Boston or Brockton Massachusetts. Law
7 enforcement has not seen that many patches on Outlaws,
8 that is my understanding. And what is interesting here
9 is he already has the patch on before this assault. So
10 it wouldn't be a patch that he got as a result of this
11 event, it would be something he earned prior to this
12 event.

13 And, again, for the record, this video was
14 from September 22, 2018.

15 THE COURT: There is no B.B.T. patch?

16 MR. TRIPI: I don't see it on that one. But
17 you have seen it on other photos, particularly the
18 photos from the clubhouse where he was staying on that
19 vest.

20 THE COURT: Which, obviously, was in 2023?

21 MR. TRIPI: Correct.

22 THE COURT: So in 2018, at least, there is
23 no B.B.T. patch.

24 MR. TRIPI: I don't see it on that one.

25 Let's look at the bottom left-hand screen,

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2 Ms. Champoux, bottom left. That one has the "snitches
3 are a dying breed" patch near the arm pit area. You can
4 make that out. At least in these photos, I don't see it
5 on the vest.

6 Sticking with Mr. Barnes for a moment, we
7 also, at this point, were able to trace the firearm as
8 well as check NCIC, which is a law enforcement database
9 where --

10 THE COURT: The firearm that was found at
11 the clubhouse?

12 MR. TRIPI: Yes. So this would be the
13 firearm that we've been talking about during Mr. Barnes'
14 prior detention appearances that was seized near his
15 personal effects in a sleeping area that had couches and
16 a bed among and other of Mr. Barnes' personal effects.
17 That firearm is a Glock 40 caliber, serial number
18 GPU157. That is a stolen firearm, according to the NCIC
19 database, which is the database where that type of
20 information gets entered. So the gun is a stolen
21 firearm.

22 THE COURT: Any information as to when it
23 was reported stolen?

24 MR. TRIPI: I'm not an expert at reading
25 these reports, Judge, but I see a date here that appears

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2 to be November 3rd, 2019.

3 The original purchase date of the firearm
4 was January 13, 2010. The dealer information is a gun
5 shop called Howell's Gun Shop, 81 West Gray Road in
6 Gray, Maine. That would be consistent with his "First
7 Blood Northeast" patch. Maine is in the northeast of
8 the United States as is New Hampshire, the area that
9 we've seen Mr. Barnes traversing. Another indicator of
10 Mr. Barnes' high rank, we believe consistent with his
11 enforcer position, is first to travel, he is in the
12 northeast, and now he is in New York. And I'll get into
13 the timing of when he came to New York. Then, you know,
14 he had a motorcycle accident in Florida. It doesn't
15 seem like he is doing any actual working. I know there
16 was proffering of him being an electrician, not a lot
17 working going on when you're an enforcer for the
18 Outlaws, I would submit.

19 But if we pull up exhibit 8 D, we do our
20 best, just zoom in on the writing on the letter to make
21 it a little bigger from Big Scott down, there you go.
22 See if we can make it a little bigger.

23 All right. So, right off the bat, Judge,
24 what is important is this is a letter from Milwaukee
25 Jack one percenter B.B.T. to Big Scott. Milwaukee Jack

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2 is Jack Rosga, former president of the Outlaws. And he
3 writes Mr. Barnes directly, "Hey, brother, I just got
4 two letters from you last night, September 13, 2023.
5 One was dated August 26th, the other one September 7th.
6 I don't know why it took so long for the one to get to
7 me. I think they are playing with my mail. Glad you
8 like the stuff I made. If you like more, let me know.
9 Just let Joey know. Well, brother, it should start to
10 cool off up there in Buffalo."

11 Now at that point in time, in September of
12 2023, we're on the verge of trial in that Pharaoh's case
13 at that point.

14 "You got that hurricane lead coming up to
15 the Northeast, you may get a lot of rain over by you. I
16 hope you got to spend time with you girl. I talked to
17 Joe One Percenter, he told me he enjoy having you. And
18 Mike One Percenter, stay by him. You're hanging with a
19 true one percenter brother. Mike One Percenter is one
20 true brother. You guys are lucky to have him up there
21 by you. I can't wait to see you and Tommy O One
22 Percenter, reference to Mr. Ermin. Well, brother, you
23 take care of yourself, ride safe, much love and respect,
24 Milwaukee Jack One Percenter, B.B.T., Outlaws forever,
25 forever Outlaws, all the way."

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2 Again, it's a letter to Mr. Barnes
3 referencing he can't wait to see Mr. Ermin. This
4 individual gets out sometime in, I believe, 2027.
5 Separately there was another letter from this individual
6 addressed to the clubhouse found in the clubhouse
7 complaining about having compassionate release denied.
8 So Jack One Percenter is writing the Buffalo club.

9 Exhibit 8-G, I would like to go to, this is
10 another letter found in the clubhouse, if you go to page
11 one, sorry, Ms. Champoux.

12 You can see it's again addressed, Hey, Big
13 Scott, One Percenter, November 8th, which is a
14 Wednesday. A lot of white pride and Nazi symbolism on
15 the letter. It's talking about some of the same people,
16 Mike One Percenter. If we go to page two, you'll see
17 the reference that about midway down, Ms. Champoux, if
18 we could sort of highlight this area. Zoom in on it.
19 And if I can figure out a way to clear that.

20 You can see this individual writing, "I see
21 you're a B.B.T. I also wear the B.B.T. patch. A brother
22 from Indianapolis cut it off his colors and gave it to
23 me before I was even an Outlaw. He told me to put this
24 on the day you become an Outlaw One Percenter and it's
25 still on my colors. I have my original patch. The feds

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2 never got it. So I have a part of Outlaws history."

3 Again, it's an acknowledgement that Mr.
4 Barnes is a B.B.T. member, consistent with his patch,
5 and that is like an important patch.

6 THE COURT: Do we know who this letter is
7 from?

8 MR. TRIPI: As I stand here right now, other
9 than the context of it being someone who is in prison
10 and an Outlaw, I don't know the identity as I stand here
11 today, your Honor.

12 I would like to pull up 12-C and 12-D. Pull
13 up 12-C, this was acquired by law enforcement. I think
14 you've seen this before, but this is Mr. Barnes on his
15 motorcycle around the time he came into this area. And
16 what is significant about the patch on the back is it's
17 a United States bottom rocker, again, indicating a
18 national level position in the organization. And, of
19 course, the helmet says "Outlaws."

20 And then if we go to 12-D, when he came into
21 town around October 8, 2021, he rode his motorcycle to
22 this location Pharaoh's, where Mr. Ermin is the manager
23 and where Peter Gerace is under indictment.

24 THE COURT: And it is your understanding
25 it's the same motorcycle?

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2 MR. TRIPI: Yes, it's the same license plate
3 from the prior.

4 Can we side by side them, Ms. Champoux, 12-C
5 and 12-D.

6 One moment, please, your Honor. Sorry, your
7 Honor. And this -- these are screen shots. There was a
8 detective who was following Mr. Barnes, according to the
9 FBI TFO that I just spoke with in court, and he was
10 followed to Pharaoh's. So --

11 THE COURT: Well, you said you were going to
12 address the timing of when he came into town and you
13 said October 2021 about when he came into town. And I
14 guess that is one of my questions.

15 MR. TRIPI: Thank you for the reminder, your
16 Honor. I'll get to that right now. So October of 2021,
17 I think the timing is significant because that is within
18 six months of the owner of Pharaoh's Gentlemen's Club
19 where Mr. Ermin is the manager and where at least three
20 other Outlaws hold significant positions at a location
21 where the government has alleged drug trafficking and
22 sex trafficking occur. Within six months of Mr. Gerace,
23 the owner of that premises, indictment becoming public,
24 and after the government made certain filings
25 referencing Mr. Ermin as the national, I think,

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2 international president of the Outlaws, because he
3 had -- Mr. Ermin had submitted an affidavit in support
4 of reduced bail conditions. One of the conditions
5 regarding Mr. Gerace was that he not work at Pharaoh's,
6 essentially. So the day of the initial search warrant
7 at Pharaoh's, which was December 12th, 2019, Mr. Ermin
8 gave a brief interview to the FBI and he indicated that
9 him and Mr. Gerace do the banking, essentially. And
10 then in an affidavit to Federal Court in support of the
11 notion that Mr. Gerace needed to be able to work because
12 he was responsible for all of the banking, Mr. Ermin put
13 in that type of affidavit. As part of the Government's
14 response --

15 THE COURT: Saying that Mr. Gerace needed to
16 be present at Pharaoh's because he was responsible for
17 all of the banking.

18 MR. TRIPI: In sum and substance, yes, your
19 Honor. And I laid out sort of Mr. Ermin's position in
20 the Outlaws as understood by the government in the
21 filing and I laid out, essentially, enough to make out
22 a, like a false statement as to Mr. Ermin in my
23 response, and I'm just trying to find it. And I
24 apologize I'm fumbling through my pages here.

25 THE COURT: That's okay, take your time.

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2 MR. TRIPI: I'll get it for you in one
3 second.

4 THE COURT: Ms. Champoux might be able to
5 help you.

6 MR. TRIPI: Okay. Yes. She did help me.
7 1-AK is sort of the overall, and these are documents,
8 it's my filing that is recovered from Mr. Ermin's
9 residence during the recent search warrants. So you can
10 see someone highlighted all of the references that I had
11 written in that filing regarding Mr. Ermin. And so if
12 we go to 1-AL, you can see the date that I filed, it's
13 docket 110, was April 8th, 2021, so not too long after
14 Mr. Gerace's indictment was public and there were some
15 bail-related motions. There was the government
16 response.

17 THE COURT: And correct me if I'm wrong, but
18 didn't you reference last week that in March of 2021,
19 there was a search warrant executed at a residence that
20 I think has been represented as one that Mr. Barnes had
21 lived at at some point?

22 MR. TRIPI: Yes, so there is a constellation
23 of events. In March of 2021 early, Mr. Gerace's
24 indictment becomes public. He is arrested. There is a
25 lot of media coverage about that. That same month, law

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2 enforcement executes a search warrant at 19 Gratton
3 Street, Buffalo, New York, the home of PJ Raslawski, who
4 is separately under Complaint. His Complaint is
5 pending, I think, before Judge McCarthy. A number of
6 firearms were seized in connection with that. The
7 underlying information relating to drug trafficking in
8 that location. Firearms were seized there. So that is
9 all happening in March.

10 April 8th, I write this filing. And if you
11 look at 1-AM, I lay out, sort of in footnotes, the
12 understanding that he is the international president of
13 the Outlaws Motorcycle Club. I lay out some cases where
14 they've historically been involved in crimes of violence
15 and racketeering type activity. If we go to 1-AN, I
16 took screen shots from the FBI interview which basically
17 laid out Mr. Ermin saying they both did the banking.
18 And then the rest of the filing indicates that now in
19 this recent affidavit submitted in support of Mr.
20 Gerace, Mr. Ermin is claiming that Mr. Gerace handles
21 all of the banking transactions. You see that at
22 footnote 8 at the bottom of page 11. And that argument
23 was just against his veracity so the Court wouldn't put
24 much stock in his representations as to Mr. Gerace
25 needing to work there. But these were found in his

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2 house December 7th. And so March, April, within six
3 months of that, Mr. Barnes comes into town.

4 THE COURT: Is that the government's
5 position, in other words, that Mr. Barnes came into town
6 in or around October of 2021?

7 MR. TRIPI: Yes.

8 THE COURT: Okay. Because I think what --
9 and that was one of the questions I had, which is that,
10 according to what Mr. Cotter stated, Mr. Barnes
11 relocated to Western New York in 2022. And then if you
12 look at the bail report, though, that was prepared by
13 probation, it states Mr. Barnes reported that he
14 relocated to Western New York approximately three years
15 ago, which would be 2020.

16 MR. TRIPI: Right.

17 THE COURT: So I think we've got three
18 different --

19 MR. TRIPI: Dates.

20 THE COURT: -- dates.

21 MR. TRIPI: Now --

22 THE COURT: So I guess --

23 MR. TRIPI: I suppose the day that law
24 enforcement surveilled him, your Honor, for all we know
25 may not have been the first time he came into this area.

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2 THE COURT: So would it be more accurate to
3 say that October of 2021 is the time period at which law
4 enforcement became aware that Mr. Barnes was in the
5 area.

6 MR. TRIPI: Yeah, and surveilled him going
7 to Pharaoh's after the activities that I just sort of
8 laid out regarding investigation of Pharaoh's and the
9 Outlaws.

10 One moment, your Honor.

11 THE COURT: Sure.

12 Let me ask Officer McCray, you're the one
13 that prepared the bail report. Mr. Barnes reported to
14 you that he relocated to Western New York approximately
15 three years ago?

16 PROBATION: Yes, Judge, that's correct.

17 MR. TRIPI: That surveillance is October 8,
18 2021, I just spoke with the task force officer.

19 Now, one of the other things, your Honor,
20 that pivoting a little bit to Mr. Ermin, but goes along
21 the lines of sort of the national, the national scope of
22 his position, this will bring us back to exhibit 21,
23 which contains other footage from a different time and
24 location, in particular on February 11th, 2023,
25 approximately 30 Outlaws arrived at the Hilton Garden

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2 Inn from multiple states. Hilton Garden Inn is
3 essentially located across from the Buffalo
4 International Airport. You'll see two videos, enter and
5 exit videos. You'll see back rocker patches on each of
6 them. We're going to let it play now. And this is from
7 February 11, 2023.

8 (Video played.)

9 Through investigation, we know that they had
10 a four hour meeting there that day. And that part of
11 getting the meeting room, they had to purchase drinks
12 through the hotel, yet you'll see a cooler be brought
13 in, and you'll see, like, looks like almost a money bag
14 be brought in, and then different person leaving with
15 the money bag at the end.

16 The first person walking in -- pause it,
17 please. These are both Outlaws. The name of the first
18 individual escapes me, but I've been informed that that
19 is a national-level Outlaw leading in in the forefront
20 of the camera position at 38 seconds. Please keep it
21 playing.

22 (Video continued.)

23 MR. TRIPI: This truck is where I believe
24 Mr. Ermin will walk out and the others will get out with
25 him in sort of a lead position. Mr. Ermin has the

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2 checkered jacket on followed by Mr. Barnes walking right
3 behind him. As I understand it, they had the meeting
4 room at the hotel for about four hours. And you're
5 continuing to see Outlaws trickle in now. As I further
6 understand it, some non-patch wearing individuals, maybe
7 prospects, I'm not quite sure, they had others sort of
8 posted outside in the parking lot area.

9 Let me pause it there for a second. Paused
10 at 2:47 mark. Far left individual, tall and thin, that
11 is an Outlaw from Florida, who formerly had a
12 national-level position. And I read a letter recovered
13 from the Buffalo clubhouse, he has put in for medical
14 retirement, but that is Hillbilly from the Florida
15 Outlaws.

16 THE COURT: That is right there?

17 MR. TRIPI: Yes.

18 THE COURT: I thought you indicated he was
19 the president at one point.

20 MR. TRIPI: At one point. At this point,
21 maybe the Florida regional president.

22 THE COURT: You mean at this point being in
23 February of 2023?

24 MR. TRIPI: That's correct, your Honor. By
25 this point, Mr. Ermin, law enforcement assesses, is the

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2 president. The understanding is that individual is very
3 sick and is much thinner. There are other photos, he is
4 much bigger. And we can keep playing the video.

5 You see the white supremacies on the winter
6 hat as he walked in.

7 Stop it there. That is Mr. Marcaccio who is
8 prominently featured in the Hilltop Bar video that you
9 saw earlier. This is the 3:21 mark. Please continue
10 it.

11 (Video continued.)

12 THE COURT: Law enforcement's assessment is
13 that prior to the person you're referring to as
14 Hillbilly, Hillbilly, it was this Jack Rosga who was the
15 president?

16 MR. TRIPI: If we could stop this. I missed
17 one. So there was, at some point in the history, Taco
18 Bowman, who maybe is the sort of famous former president
19 who was convicted of racketeering.

20 THE COURT: Who has died and the funeral.

21 MR. TRIPI: Correct. And then Milwaukee
22 Jack, Jack Rosga. And then a guy named James Lee Big
23 Frank Wheeler.

24 THE COURT: That is all one person?

25 MR. TRIPI: Yes. James Lee Big Frank

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2 Wheeler. He was the former national president. He
3 succeeded Taco Bowman. After Bowman's 2001 conviction,
4 Wheeler himself was convicted of racketeering in 2004
5 and died in prison in 2020.

6 THE COURT: And so then Milwaukee Jack
7 became president after Wheeler?

8 MR. TRIPI: Yeah, I believe that timeline is
9 Milwaukee Jack follows in or around 2006 because in or
10 around 2004, Wheeler himself is convicted of
11 racketeering and he dies in prison in 2020. So, Taco
12 Bowman, then Big Frank, then Milwaukee Jack, then maybe
13 Hillbilly, then Mr. Ermin.

14 THE COURT: Okay.

15 MR. TRIPI: That is to the best of my
16 ability. If we can keep playing this video.

17 (Video continued.)

18 Next you'll see the cooler get wheeled in
19 the meeting room. Okay, your Honor.

20 I'm going to stop this video here at 5:18
21 second mark and ask Ms. Champoux to play the next clip,
22 which you're going to see a lot of them exiting now and
23 you'll be able to see a lot of the bottom rockers.

24 THE COURT: What was the date on the first
25 video?

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2 MR. TRIPI: This date is February 11, 2023.

3 THE COURT: And the second video is the same
4 date?

5 MR. TRIPI: Yes, it's in and out.

6 THE COURT: Okay.

7 (Video played.)

8 MR. TRIPI: So you see New York. Okay.

9 Pause it. We're at the almost the 6 minute mark, 5:58
10 seconds, you'll see a number of them walking out and
11 you'll see different bottom rockers representing
12 different parts of the country. Law enforcement
13 determined a lot of them flew in that day and had a
14 meeting and immediately departed town. And so in this
15 clip you'll see Indiana and Louisville. You can play it
16 from there. Savannah, reference to Savannah, Georgia,
17 potentially. United States bottom rocker.

18 Please continue. Pause it.

19 Notice the carrying of the cooler back out.
20 It's very heavy. Two Outlaws are carrying it, so,
21 again, law enforcement doesn't know what was in the
22 cooler, but we've determined that drinks had to be paid
23 for through the hotel. It came in being wheeled in and
24 came out, this large cooler, being carried, doesn't seem
25 like if one were to posit they had drinks in there,

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2 nothing was removed from it.

3 THE COURT: So what is your theory?

4 MR. TRIPI: There is a national meeting, a
5 large cooler is brought in, different Outlaws bring it
6 out. It seems to be just as heavy when it came in and
7 went out. That is all I had. I thought it was
8 something worth pointing out. Please continue.

9 THE COURT: You don't think they brought
10 drinks and then realized they had to buy them from the
11 hotel so?

12 MR. TRIPI: You're asking me a direct
13 question? No, I don't think that. No.

14 Please continue.

15 I'd like to direct your attention now to
16 exhibit 23 that was handed up today and was provided to
17 counsel. It's a report by a Homeland Security agent who
18 is working on this investigation and it summarizes a
19 search of certain phone during an order search. And it
20 has information further indicating that Mr. Ermin is the
21 national president based upon the phone search that was
22 conducted at an international border. So I'll read it
23 into the record, your Honor.

24 "On August 10, 2021, several members of the
25 Outlaws Motorcycle Club returned to the United States

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2 from Spain via J.F.K. Airport. During primary
3 inspection by U.S. Customs and Border Protection,
4 several members of the group were referred for secondary
5 inspection. One of the individuals identified is Keith
6 bikes. Subsequent to the inspection, Bikes' cellular
7 phone was detained and a Border search of his phone was
8 completed. A document titled "USCH Check 2-5 PDF was
9 located on the phone. Some of the information in that
10 document were each of the Outlaws' chapters of the
11 United States, the chapter point of contact, and the
12 region each chapter belonged to. The document
13 identified nine colored coded regions of the United
14 States. Black for Indiana, Michigan and western Ohio,
15 so in that video you just saw, the black region was
16 represented. You saw several, you saw at least one
17 Indiana bottom rocker.

18 Blue, which is New York, Eastern Ohio and
19 Pennsylvania, you saw the blue region was represented,
20 there were New York patches. Gray, Tennessee and
21 Kentucky. Admittedly in the video, I didn't see any of
22 those, but you did see a Louisville patch, so I would
23 argue that Louisville, that region was represented.
24 White, Illinois; you saw Illinois patches. Platinum,
25 Arkansas, Colorado, Missouri and Oklahoma. I didn't see

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2 any of those patches. Silver, North Carolina, Alabama
3 and Georgia; there was a Savannah patch on a vest.
4 Savannah is a city in Georgia. Orange, Florida, we saw
5 Hillbilly on that tape, he is from the orange region.
6 Red, Connecticut, Massachusetts and Maine, well, Mr.
7 Barnes is from the Massachusetts area, and I think one
8 of his vests in the Buffalo clubhouse had a
9 Massachusetts patch on it. And gold for Wisconsin. I
10 didn't personally see a Wisconsin patch.

11 Getting back to the border search, though,
12 within the I message text message communication on the
13 phone, there was a conversation among 10 Outlaws MC
14 members, one from each of the regions, and John Ermin,
15 AK "Tommy O." The agent, the Department of Homeland
16 Security, assesses that the group chat is consistent
17 with Ermin being in a leadership forum with the regional
18 presidents. There is a note there that indicates that a
19 prior president was James Lee "Big Frank Wheeler."
20 In addition to the conversation which are attached to
21 the report, there are several photographs that were
22 obtained where you could see Mr. Ermin front and center
23 in a large Outlaws group photo. And we would submit
24 that is consistent with his leadership position in the
25 organization. The first was obtained from the Outlaws

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2 Canada website captioned Caribbean 2020. The second was
3 recovered from a search of Mr. Ermin's phone during a
4 border search October 10th, 2021 returning from Spain.
5 He was among the group returning from Spain.

6 THE COURT: Which is not consistent with
7 what was reported --

8 MR. TRIPI: For international travel, that's
9 correct. He has a lot of international travel, I
10 haven't nailed it all down, your Honor.

11 THE COURT: That is one of the questions
12 because I think last week you indicated that he was
13 involved in setting up the chapter in Brazil.

14 MR. TRIPI: You could see references to that
15 in his phone. And then in his house, there is a big
16 Brazil flag on the wall. That biker club where you saw
17 the photo of the blue arrows, that is a different biker
18 club in Brazil. From a constellation of different
19 sources.

20 THE COURT: When you represented that he was
21 involved in setting up that chapter, does that mean that
22 you had information that he traveled to Brazil?

23 MR. TRIPI: I'll have to double check that.
24 I received a spreadsheet. I tried to look into all of
25 the travel. I received a spreadsheet, but I haven't

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2 decoded all of the airports.

3 THE COURT: Do you have some information on
4 his international travel?

5 MR. TRIPI: I'll get that, if we're going to
6 take a little break.

7 THE COURT: We'll take a break.

8 MR. TRIPI: But the Brazil chapter, we know
9 that the Brazil expansion happened under his tenure of
10 president, so that is why I said he is responsible
11 because as the leader of the organization, he is going
12 to be responsible for closing or opening new chapters.
13 So if you go to the attachments for that report, you'll
14 see "OL Tommy O" with a phone number, and then
15 "received." And that is because these are text messages
16 coming into the other Outlaws' phones. Bikes, who I
17 referenced this, these are the text messages that the
18 agent assessed are to the regional leaders from Tommy O.
19 You see the first one says "AOA 2020 has been one hell
20 of a ride. Our world was turned upside down. We're
21 still bigger than ever. The strong survive. We've
22 welcomed new brothers, chapters and countries. 2021
23 we're going to continue to grow and expand our great
24 nation with true brotherhood. Myself personally, I
25 would like to thank everyone for standing by my side

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2 through one of the roughest times of my life. To the
3 crew that made and is still making history in South
4 America" -- we believe that to be the reference to
5 Brazil -- "right on. I love my true one percenter
6 brothers. Happy F'ing New Year, Tommy O, One Percenter,
7 B.B.T."

8 THE COURT: Let me make sure I'm following,
9 it's your proffer this was a message from Mr. Ermin to
10 Bikes, whose phone was searched?

11 MR. TRIPI: That's correct. They were in
12 the group traveling from Spain. This is Keith Bikes'
13 phone where these text messages were recovered from.

14 The next one, you can see that was a text on
15 New Year's in 2021, on New Year's day. The next one is
16 April 4th, 2021, Happy Easter, I hope you eat like kings
17 and enjoy the day with your families. Always remember
18 our members in jail and JBNF, gone but not forgotten,
19 and make sure all the brothers have a seat at somebody's
20 table. I love my true one percenter brothers.

21 I submit, Judge, these are text messages
22 that sound like a leader talking to your group.

23 THE COURT: That phone number, that is
24 identified there, is that consistent with information
25 that the government has about a number used by Mr.

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2 Ermin?

3 MR. TRIPI: He has had several numbers, but
4 I believe that to be accurate, your Honor.

5 THE COURT: I mean do you know, or can you
6 find out?

7 MR. TRIPI: I can find that out.

8 THE COURT: Okay.

9 MR. TRIPI: The next one, it references a
10 funeral, March 9, 2021, this is a funeral that is to be
11 attended by everyone.

12 THE COURT: Do you know what funeral that is
13 referred to?

14 MR. TRIPI: I don't. I do know that -- well
15 I'll withdraw that. I'm not sure what funeral it is.

16 March 6, 2021, all Charlie embroidered
17 shirts, that is their center patch, reference to
18 "Charlie," that is the center patch. "All Charlie
19 shirts are only to be done in Milwaukee since Frank was
20 on the street. It will be an issue." "The next time
21 they are be bootlegged, it will be an issue for the
22 region doing so." So the reference to Frank is the
23 prior national president.

24 December 13, 2020, under the heading "social
25 media posts," "nobody is to post on or like posts of

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2 other clubs that are not Outlaws support and/or
3 affiliated. Stop supporting anyone but us. Two, I do
4 not care about posts with our patches and parties as
5 long in everybody in the picture is cool with it.
6 Three, do not ban anyone from use LHR, Tommy O One
7 Percenter."

8 Next one is July 29, 2021, "Warlocks will be
9 traveling to Akron, Ohio for a funeral of a member's
10 son." And so that is going out to a number of leaders
11 and that is -- that indicates, your Honor, that the
12 Warlocks are clearing, essentially, their travel with
13 Ermin, who is okaying them to go through Outlaws
14 territory to go to a funeral of a member's son.

15 June 7th, 2021, "It was a great weekend, my
16 brothers. The old timers of our club seem to have a
17 hard time with new perspectives. Seems to be their
18 sidebar focus and are claiming that they were never told
19 of it. It is not going away. They need to drop it.
20 And the majority of these nay sayers went patch for
21 patch coming in. The stupid shit I hear about after
22 Nationals that Philly passed out say and do, maybe the
23 nay sayers should have done a better job with them so
24 they knew more than how to carry a garbage bag and pour
25 beers. I love you and proud to stand beside you my true

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2 one percenter brothers."

3 What follows are photos that show Mr. Ermin
4 front and center, he has the black tank top on and the
5 gold chain and sort of a black hat. And we would submit
6 just the position where he is standing in those photos
7 is another indicator of leadership.

8 THE COURT: Just so I'm clear here, is this
9 first photo that is at the top, what's referenced in the
10 report as "Caribbean 2020"?

11 MR. TRIPI: Yes. And the second is an image
12 recovered from Mr. Ermin's phone. And we will look
13 at --

14 THE COURT: So Mr. Ermin's phone was
15 searched at the same time as this Bikes' phone?

16 MR. TRIPI: Yes.

17 THE COURT: In other words, they were
18 traveling together?

19 MR. TRIPI: Yes.

20 THE COURT: Okay. And they were both
21 traveling both back from Spain, and during Customs, the
22 phones were searched, but it sounds like Bikes was
23 seized or --

24 MR. TRIPI: His was seized and extracted. I
25 believe Ermin's was also extracted, your Honor. It may

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2 well be that the text messages were not in Mr. Ermin's
3 phone, deletions, things like that, but were located in
4 Bikes' phone.

5 THE COURT: Do you know?

6 MR. TRIPI: I'm just giving an explanation.
7 This is a very specific assignment I gave an agent over
8 Christmas weekend to pull information from those
9 searches. I don't have those extractions that would be
10 an additional indicator to the Court to assess his
11 leadership position. I don't have the whole Ermin
12 phone. I don't know what's in it or not in it as I
13 stand here today. So the tasking was pull what you can
14 from the phones that you have that, further, beyond what
15 I've already proffered, can help this Court determine
16 his position in the organization. So that was the
17 tasking and that is what we came up with for that.

18 But I'd like to follow that up with on
19 January 24, 2023, something that Crystal Quinn told the
20 FBI. Crystal Quinn said, in part, her main concern is
21 the Outlaws. She knows Tommy O is the president of the
22 Outlaws and manager at Pharaoh's. She is one of several
23 witnesses who have reported him being the president. So
24 that is not singular even from civilian witnesses, your
25 Honor. I never previously proffered what Ms. Quinn said

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2 that. I proffered previously about her cocaine usage
3 and overdosing in the clubhouse, but not that she said
4 he was the president. That is consistent with.

5 THE COURT: I asked you that and you said
6 you were pretty sure she said that.

7 MR. TRIPI: You have a better memory than
8 me, your Honor, because I didn't remember that part, but
9 if I said that now, I've gone back and checked. That is
10 consistent with assessments by the FBI, HSI and ATF
11 expert who we anticipate will be our trial expert
12 regarding the Outlaws, Jeremy Sheetz. It's consistent,
13 we believe, from the prior national president Milwaukee
14 Jack. And it's consistent with exhibit 21, the video at
15 the Garden Hilton in where there is a national
16 leadership meeting and consistent with the international
17 travel to and from Spain. It's also consistent with
18 exhibit 1-0, if we could pull that up. So this is not a
19 letter that is directed towards Mr. Ermin, it's directed
20 towards to any one percenter, but it's a time frame back
21 when Mr. Ermin was a regional president. So think time
22 frame who he was arrested with, special Ed in Ohio.

23 THE COURT: And this was found where and
24 when?

25 MR. TRIPI: This was found in Mr. Ermin's

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2 residence -- let me double check that. Yes, in Mr.
3 Ermin's residence along with some of the other
4 documents. The whole "1" series are until you get to 15
5 U, everything up to 1-AU was seized from his house.

6 THE COURT: Okay.

7 MR. TRIPI: This is an individual who had
8 pled guilty, and, essentially, is pleading with other
9 ranking Outlaws back in 2013, it says, "I have attached
10 a copy of the information and documentation that I've
11 sent out to Richard One Percenter in Louisville,
12 Kentucky, and I also sent a copy to Larry Mack One
13 Percenter and Tommy O One Percenter, Collin One
14 Percenter, et cetera. Hopefully somebody would read
15 this. I would like to you read it. I am a good brother
16 and have not done anything wrong. I just went to
17 prison, that was for the club. Not stealing, drugs, et
18 cetera, just for being an Outlaw and in a leadership
19 role. Also I took a plea and please read the letters
20 from attorney from document five."

21 There were several attachments from this I
22 won't get into.

23 "It clearly states your plea agreement
24 cannot be used as proof against any other members of the
25 Outlaws' organization. That Outlaws organization is a

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2 criminal organization. Also your plea does not affect
3 the larger Outlaws organization nor does it affect any
4 current member of the Outlaws who is not otherwise
5 subject to the indictment to which you are pleading
6 guilty. Furthermore, your plea did not impact the case
7 of any co-defendants. My plea agreement affects only
8 me. I've always done what is right. I'm a good brother
9 and would help anytime needed. I would not let my
10 brothers s go to prison. Please understand. Also I
11 just wanted you to know what I am doing, I'm not going
12 over your head."

13 So this is a person named Ivan reporting to
14 Tony One Percenter that he sent it to higher ranking
15 Outlaws to try and prove that he was not, essentially, a
16 snitch. So even back in 2014, this supports that Mr.
17 Ermin had a leadership position in the larger
18 organization, which, mat that time, he was the blue
19 regional president. That is back at the time frame when
20 he stopped with Mr. Decay in Ohio.

21 THE COURT: I'm going to take a break at
22 some point. You've been going about two hours.

23 MR. TRIPI: I'm sorry.

24 THE COURT: Don't apologize. But is now an
25 okay time to stop?

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2 MR. TRIPI: Yes, your Honor. Thank you,
3 Judge.

4 THE COURT: Why don't we plan on taking a
5 break until about 1:30. Okay. See everybody back here
6 shortly.

7 MR. TRIPI: Thank you, your Honor.

8 (Whereupon, there was a break in the
9 proceeding.)

10 THE COURT: All right. We are back on the
11 record, note the presence of all counsel, Mr. Barnes,
12 Mr. Ermin, Officer McCray. Are you ready to continue,
13 Mr. Tripi?

14 MR. TRIPI: Yes, your Honor. I was, next, I
15 was going to pull up Government's Exhibit 20-F, and this
16 was along the lines of just sort of circling back on his
17 national leadership. Again 20-F, United States bottom
18 rocker.

19 THE COURT: This is whose vest?

20 MR. TRIPI: This is recovered from Mr.
21 Ermin's residence. It's a photo of it. Again, law
22 enforcement indicates to me that that is indicative of
23 national leadership position. Next we have 20-G, and I
24 know I showed you this one before, your Honor. But 20-G
25 --

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2 MR. MUSCATO: Judge, I hate to interrupt. I
3 apologize for interrupting you and Mr. Tripi. I thought
4 we went through 24 on Tuesday in Rochester already. It
5 seems to me this is a just a repeat of what your Honor
6 has already heard.

7 THE COURT: It may be you're right, but if
8 you're objecting, I'm going to overrule it.

9 MR. MUSCATO: It was an objection. Thank
10 you, your Honor.

11 THE COURT: Go ahead.

12 MR. TRIPI: Ms. Champoux, if we could zoom
13 in on the national pin, that part. Again, I just wanted
14 to indicate, this is a pin, I likened it to having like
15 a five-star general on your lapel. This is his national
16 pin on his vest. Again, another indicator of his
17 national-level position.

18 I think when I go through the travel
19 document at the end, I'll point out a couple more things
20 regarding his international travel as well as some of
21 the significance of the location of travel.

22 THE COURT: Let me interrupt you for a
23 second. Mr. McCray, you completed, I believe, the bail
24 report for Mr. Ermin as well, correct?

25 PROBATION: Yes, that's correct.

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2 THE COURT: And it indicates in there the
3 defendant reported that he possesses a United States
4 passport. He indicated that he has not traveled
5 internationally. Mr. Ermin stated that -- it probably
6 should be Mrs. Ermin.

7 PROBATION: That's correct.

8 THE COURT: Mrs. Ermin stated that the
9 defendant has not traveled in many years. Did the
10 defendant tell you that he had not traveled
11 internationally?

12 PROBATION: That's correct.

13 THE COURT: What?

14 PROBATION: That's correct.

15 THE COURT: And his wife told you he had not
16 traveled in many years?

17 PROBATION: Yes, not recently.

18 THE COURT: Traveled or traveled
19 internationally?

20 PROBATION: International, that is the
21 question. Any international travel.

22 THE COURT: And the words used to, according
23 to your report, on the part of Mr. Ermin's wife was
24 "many years."

25 PROBATION: Yes, Judge.

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2 THE COURT: Okay.

3 MR. TRIPI: Sandy, could you switch me to
4 the projection screen?

5 THE CLERK: Sure.

6 MR. TRIPI: With that, I'll segue into what
7 I've now marked as exhibit 24. I've handed it up. And
8 I've provided copies to counsel.

9 What this document is is Homeland Security
10 has the ability to search the systems of Customs and
11 Border Protection, and this will document Mr. Ermin's
12 international travel; obviously not his domestic travel.
13 And so just to jump off of what Mr. McCray just
14 reported, you see the very top entry, you see that he
15 had travel from -- to Mexico City, going across the top
16 looks like a Delta flight inbound and out bound. ATL is
17 Atlanta, MEX is Mexico City. And that encounter date --
18 and so OBD means he was on board. And that encounter
19 dates when he is going in bound and out bound is January
20 of 2023. So he traveled earlier this year.

21 Now, next one down, there is a flight,
22 American Airlines, flight inbound, coming from Madrid
23 Spain to J.F.K. He is on board, so I'm looking at the
24 third row down, August 10, 2021. He was scheduled to be
25 on an inbound flight from Madrid to J.F.K., looks like a

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2 day earlier. NBD means not on board. Maybe he changed
3 his flight, but he comes in from Madrid in August,
4 August 10th, 2021.

5 Next one down, that is his outbound from
6 J.F.K. to Madrid, August 4th, 2021. Appears he was in
7 Spain from August 4th, 2021 to August 10th, 2021. And
8 if you go back to exhibit No. 23, that is when he is
9 encountered coming back from Spain.

10 Then we have travel coming inbound to the
11 United States from A and U, which is Antigua. Came into
12 Miami, outbound was Miami to Antigua, January 2nd, 2020
13 returning January 6th, 2020. Our expert advises us that
14 every year in January, the Outlaws have a, essentially,
15 a leadership meeting in Antigua. And it's attended by
16 national leadership as well as B.B.T. leadership. And
17 so you see, Mr. Ermin has travel in January to and from
18 Antigua where those meetings occur.

19 Further down, I'm going now to 2019, Judge,
20 if you see that. There is inbound, again, the Antigua
21 trip in January 2019. He is on board from Miami to
22 Antigua and on board from the inbound from Antigua back
23 to Miami, six-day trip, January 21st, 2019 to January
24 27th, 2019.

25 I'm going to skip two rows there that says

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2 he is was not on board and we get to 2017. Again, he is
3 at the Antigua trip where --

4 THE COURT: Must have been cancelled during
5 the pandemic because you got it in 2019, 2020, but there
6 is no travel after to Antigua, at least after 2020.

7 MR. TRIPI: That would be consistent with
8 the timing of the pandemic, your Honor.

9 THE COURT: So your 2017, January, another
10 trip to Antigua.

11 MR. TRIPI: That's correct. And then we get
12 to 2015, he is coming into the country from Antigua in
13 May and then are other airports where we're talking
14 about EWR coming into Newark, SNN, that is Shanon,
15 Ireland.

16 THE COURT: This is 2014, right?

17 MR. TRIPI: Yes. TXL, just going back up to
18 2018, TXL, that was he is not on board, but that is
19 Berlin. So apparently there was travel scheduled to go
20 to Germany, but he didn't get on board. If you go to
21 July 30, 2014, he is coming back into the country from
22 Shanon, Ireland and he left the country about a week
23 earlier from Boston to Dublin Ireland. And you see
24 there is international travel apparently going back to
25 2005, looks like that is the beginning of his Antigua

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2 involvement, which would indicate his B.B.T. involvement
3 and/or his national level leadership. So, we believe
4 that the reporting that he hasn't traveled
5 internationally in a long time is characterized,
6 charitably, it's inaccurate.

7 THE COURT: I think he said, according to
8 the report, Officer McCray, you correct me if I'm wrong,
9 according to the report, the defendant indicated that he
10 has not traveled internationally, period, right?

11 PROBATION: Correct.

12 THE COURT: So I think his wife said it's
13 been many years, but it seems as though Mr. Ermin told
14 Officer McCray that he has not traveled internationally.

15 MR. TRIPI: And that would be, I would say,
16 consistent with his false statements to another judicial
17 officer at an earlier point in time where he submits an
18 affidavit in support of Mr. Gerace. In other words, Mr.
19 Ermin is not a reliable person and even his wife, if you
20 characterize it charitably, she is woefully inaccurate.

21 THE COURT: Not to get too far afield,
22 though, I would like to bring you back and show you some
23 of the weapons he had in his house. So if we can go to
24 exhibit 18-A, if we can switch back, if you would be so
25 kind, to the computer.

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2 So these are recovered from Mr. Ermin's
3 residence. This is item 37, appears to be a machete.

4 We can go to 18-B, Ms. Champoux.

5 This image shows a variety of ammunition,
6 daggers, firearms, number of knives, straight razor,
7 all, many of the cutting instruments easily concealable
8 on an individual's person, excuse me.

9 If we go to 18-C. Showing various calibers
10 and what you see is a couple fired cases. 18-D, what
11 you see in the box there, 62, is a set of brass
12 knuckles. Significantly, if you go back to the arrest
13 in Ohio when he was with Mr. Decay in 2015, seized
14 during that vehicle stop, in addition to the firearms
15 and the methamphetamine, were brass knuckles. So fast
16 forward to 2023, brass knuckles are unlawful under New
17 York law, that is a state violation, you're not allowed
18 to have brass knuckles. Unless the law has changed
19 since I've been a state prosecutor, I don't think it
20 has, he could be charged state side just with the brass
21 knuckles.

22 If we go to 18-E, it's just a better
23 close-up image of the brass knuckles. If we can go to
24 18-F, again more knives, one of which appears to be a
25 dagger. 18-G, more knives. 18-H, please. More knives.

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2 Different knives. We see a different item number. A
3 lot of knives.

4 THE COURT: Do you have an estimate as to
5 how many knives.

6 MR. TRIPI: I didn't on the knives. I
7 didn't tally them. I think the firearms totaled 16.

8 18-I is like a crossbow.

9 Now, I will show you some of the drugs
10 consistent with his admissions that they recreationally
11 used marijuana for the purposes of the strength of the
12 charges on the Complaint. So those are THC edibles.
13 That is exhibit 19-A. Go to 19-B, item 82, marijuana.
14 19-D, please, that is C. 19-D are various different
15 edibles with THC. Obviously it's still a scheduled one
16 controlled substance. That is item No. 83. You can see
17 this is different sets of drugs. Go to 19-E, more
18 marijuana. And 19-F. And I did go back, and it's about
19 \$40,000 in the residence.

20 THE COURT: That was seized from the home.

21 MR. TRIPI: Correct.

22 THE COURT: And about 10,000 from the
23 clubhouse.

24 MR. TRIPI: That's correct. Your Honor,
25 preliminarily, just on the charges in the Complaint,

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2 we're looking at around three years on a Guideline
3 sentence.

4 And the last thing I'd like to leave off
5 with, I'm just going to read it into the record. If we
6 could show 4-A. I'm sorry, Judge. 4-A shows a number
7 of the firearms laid out on his bed. Some are not
8 pictured because I believe there were about 16.

9 THE COURT: Were they all shotguns?

10 MR. TRIPI: They were all long guns, rifles
11 and shotguns.

12 If the Court will indulge me for two more
13 minutes.

14 THE COURT: I have a number of questions for
15 you.

16 MR. TRIPI: Okay. The last thing I'm going
17 to do is read into the record the assault where we do
18 have evidence of Mr. Ermin back in 2010, you know, being
19 involved in a hands-on assault of an individual.

20 THE COURT: And that was one of the
21 questions that I had for you, because I don't think you
22 talked about that last week.

23 MR. TRIPI: I did not.

24 THE COURT: And these were documents that
25 were found in Mr. Ermin's residence?

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2 MR. TRIPI: That's correct. So in New York
3 state, your Honor, it's been a while since I've been an
4 ADA, but to make the information sufficient, you would
5 attach, for example, the charging document prepared by
6 the police officer and the supporting affidavit of a
7 victim. So right out of the gate, even when I was a
8 state prosecutor, victims would get outed right from the
9 inception of a case. So I know New York law has changed
10 since then and it's becoming even more broad in terms of
11 the discovery laws. But even back in the 2010 time
12 frame, he would have been provided the charging document
13 and a supporting deposition and clearly he kept it. But
14 what that gives an individual is the name of the person,
15 whose the witness, and so I'm not going to read that
16 person's name into the record. But according to the
17 deposition that they signed, this goes April 15, 2010 at
18 approximately 12:45 a.m., "I was at the Fireside Inn
19 with my girlfriend and her friend. And we went outside
20 to smoke on the front patio. Two guys that the two
21 women knew followed us out front. I later learned their
22 names were Corey Benson."

23 He was the individual in the video that you
24 saw with the baseball cane in the Hilltop Bar video.
25 That is Corey Benson.

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2 "And J Tommy Ermin. The one woman's friend
3 wanted to take a ride on Tommy's motorcycle and the
4 other women objected. I watched Corey Benson then say
5 to the one female that the other female is a big girl
6 and she can make her own decisions. I then could tell
7 that Corey was angry with the one female. And I tried
8 to calm the situation by introducing myself to Corey.
9 At that time, Corey called me an asshole and then he and
10 Tommy pushed me back and began punching me in the face
11 and body. And also another male who was with them in
12 the bar came out of the bar and began punching and
13 kicking me. I later learned his name to be Dennis
14 Fault. I finally was able to get up and retreat to the
15 parking lot. While in the parking lot, I watched Tommy,
16 whose name I later learned to be John T Ermin, push and
17 slap one of the females across the face, she fell to the
18 ground. The I tried to help her and the other female
19 leave, but then Dennis Fault, Chris Marchewak and Corey
20 Benson began to punch and kick me and beat me again.
21 One of them grabbed the back of my neck and were
22 slamming my head off of the curb and pavement. I could
23 feel blood streaming from my face and nose. I heard
24 Tommy yell, "Come on, the cops are going to come.
25 You're taking too long." At that time, I looked up and

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2 a police officer pulled up and I heard him yell to the
3 guys beating me, "Don't move, shut off your bikes." I
4 did notice that each of the guys that beat me, Tommy
5 Ermin, Dennis Falk, Corey Benson, and Chris Marchewak,
6 M-a-r-c-h-e-w-a-k, were all wearing Outlaws motorcycle
7 gang jackets and vests.

8 And there is a statement from another
9 witness. It's included in the packet, your Honor, as
10 7-A. I say it's substantially similar to that and so I
11 think there is a couple of things there. One, obviously
12 willing to assault someone over next to nothing. Two,
13 his position even back in 2010, other people are doing
14 the beating and he is now standing back and giving
15 directives. Not directives to stop, because you're
16 hurting someone, directives to stop because you're
17 taking too long and the cops are going to come.

18 And just another thing I would like to point
19 out that I neglected in my proffer last time, you may
20 have heard it from Mr. Cooper. In the clubhouse itself,
21 there was an envelope recovered that said "Burn." In
22 other words, despite the documentation that we recovered
23 --

24 THE COURT: No, I haven't heard this.

25 MR. TRIPI: You haven't heard this?

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2 THE COURT: No.

3 MR. TRIPI: So there is an envelope that
4 indicates "Burn," and I'm going to look for the exhibit
5 number. It's 15-H, that is their "burn" bag that was
6 found in the Buffalo clubhouse. What I would argue to
7 you and what I would argue later on to a jury,
8 notwithstanding the incriminating and information that
9 was located, there is additional things that they
10 acquire that they burn. For example, we didn't find the
11 notes that were taken during the trial that you sat
12 through. That was something that I thought might be
13 found. We found, clearly, other source reports through
14 the years and other references to cases, and I've
15 covered that already. But we found a witness list from
16 Milwaukee Jack's case with notations written next to it.
17 I have the FBI looking into, you know, what may or may
18 not have happened to any of those witnesses, I just
19 don't know. But this indicates to law enforcement and
20 to me that there is even more serious items that they
21 acquire that they then burn.

22 THE COURT: Was there anything in the
23 envelope?

24 MR. TRIPI: No, I looked at that envelope,
25 at least when it came back after being seized, and I

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2 don't recall seeing anything in that particular bag.
3 But I thought it was important. I believe that was
4 located sort of in the bar area, behind the bar.

5 With that, your Honor, I do have some checks
6 being made into that phone number before I sit and see
7 if I can find that out. I just spoke with a special
8 agent with Homeland Security who is present in the
9 courtroom and they ran some checks on that number, it
10 does come back in one of the databases as being
11 associated with Mr. Ermin in Accurint database.

12 THE COURT: What database?

13 MR. TRIPI: Accurint, A-C-C-U-R-I-N-T. And,
14 Judge, I would just note that not all of the devices
15 that we've seized have been fully analyzed yet. That is
16 going to be a lengthier process. I do know and can
17 proffer that there was an additional phone number that
18 was located in Michael Roncone's phone for Tommy O, and
19 does not appear that we have seized or located that
20 phone. So it would appear, in other words, what I would
21 argue to this Court and what I would argue to a jury,
22 consistent with the items we found about their law
23 enforcement consciousness and their posting of roving
24 wiretaps, that Mr. Ermin is well versed in what the
25 utility of using burner phones.

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2 THE COURT: How many phones, if any, were
3 seized from his residence?

4 MR. TRIPI: There were two that I can think
5 of. A lot of other devices, but the number two is
6 popping in my head. I don't know that we marked all of
7 the device images for you. Probably should have done
8 that.

9 THE COURT: Anything that you would
10 characterize as a burner phone?

11 MR. TRIPI: I don't think I can answer that
12 question. We do have the photos, more than we have
13 marked. If you would like to give me a minute, I can
14 look through it; Ms. Champoux has them.

15 THE COURT: I have questions.

16 MR. TRIPI: I can answer those, and in the
17 mean time, Ms. Champoux, can you look for the device
18 photos?

19 THE COURT: Okay. One of, and I may be
20 jumping to Officer McCray as well, one of the questions
21 I had for Officer McCray was with Mr. Ermin's bail
22 report, there is no reports of any bank account
23 disclosures. So, in other words, for assets, and I just
24 want to confirm that, I guess Mr. Ermin, at least what
25 he reported to you, is that he has no bank accounts?

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2 PROBATION: That's correct, Judge.

3 MR. TRIPI: Judge, if I could chime in. I
4 don't have it marked or anything like that, but, again,
5 I have at least cursory reviewed all of the physical
6 items, I do have some notes. I noted in the items
7 recovered from his house that there is an Alden State
8 Bank Account No. 7030, and I won't do the rest of it
9 publically, in Mr. Ermin's name.

10 THE COURT: Alden State?

11 MR. TRIPI: Alden State Bank.

12 THE COURT: So Mr. McCray just so I'm clear
13 on how the interview goes, did Mr. Ermin just not
14 disclose any bank account or was he asked affirmatively?
15 I mean, how did that play out? Do you understand my
16 question?

17 PROBATION: Yes.

18 THE COURT: Make sure you're speaking in
19 into the microphone. Your microphone is on?

20 PROBATION: Yes. We generally ask, do you
21 have any cash, checking or savings accounts. The only
22 assets he listed was his vehicle and his residence.

23 THE COURT: But so in response to a question
24 do you have any cash or bank accounts, he disclosed
25 neither cash nor bank accounts?

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2 PROBATION: That's correct.

3 THE COURT: One question I had for you, Mr.
4 Tripi, is, obviously, you've been prosecuting the case
5 involving Mr. Gerace for some time now.

6 MR. TRIPI: Yes, Judge.

7 THE COURT: And there are counts, if I
8 understand correctly, in the indictment, I can't tell
9 you that I've looked at the indictment, but there are
10 counts alleging that the Pharaoh's entity, number one,
11 was a drug trafficking premises?

12 MR. TRIPI: Drug involved premises, yes.

13 THE COURT: And then two, that sex
14 trafficking was occurring at that premises?

15 MR. TRIPI: Yes, your Honor.

16 THE COURT: So Mr. Ermin is the manager of
17 the premises, you obviously have been for some time
18 gearing up for that trial, do you have any evidence
19 supporting either Mr. Ermin personally involved in drug
20 trafficking at Pharaoh's or involved in sex trafficking?

21 MR. TRIPI: Yes. We have information that
22 he has supplied pills, Lortabs.

23 THE COURT: That is what Mr. Pirk supplied.

24 MR. TRIPI: Yes, under similar
25 circumstances. Drug addicted young women who then

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2 engage in sex acts.

3 THE COURT: So you have information that Mr.
4 Ermin supplied Lortabs to dancers at Pharaoh's. Is that
5 a fair statement?

6 MR. TRIPI: To at least one.

7 THE COURT: Anything else?

8 Because I guess my point is, you obviously
9 have an indictment that the grand jury determined that
10 there was probable cause to believe that sex trafficking
11 and drug trafficking were occurring in the premises.
12 You have various members of the Outlaws Motorcycle Club
13 that work at the premises. You have Mr. Ermin who has
14 been the manager for some period of time.

15 MR. TRIPI: That's correct, your Honor. So,
16 all correct observations. The initial assessment that
17 was made when that indictment was returned was to focus
18 on -- you got to remember, that superseded the Special
19 Agent Bongiovanni's indictment and so not having a
20 crystal ball, I guess, in terms of how long that
21 litigation would take. Frame of reference, Kingsmen
22 case had been tried within two years. And now we're
23 several years down the road past that in that case. So
24 I can tell you as the person whose point on that, the
25 assessment was made to focus on the allegedly corrupt

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2 agent and that person first, and then get to others that
3 may be involved in the criminality there to keep the
4 focus, keep at that point what was perceived to be the
5 main thing, the main things, in other words. Not that
6 this is not a sob story. Obviously the government has
7 its resources, but we lost some AUSAs during that time
8 period. One who I know you're familiar with who had
9 been with me on those investigations and so that took
10 some adjusting to.

11 That doesn't change the facts that your
12 Honor correctly pointed out. I can tell you that, you
13 know, there has been information reported and I think I
14 said this last time, so if I'm repeating, I do
15 apologize. I'm trying to be responsive to your Honor
16 that women who are on the outs or in trouble have been
17 punished by being sent to the Outlaws clubhouse to
18 dance. Additionally, there have been other witnesses
19 that have reported using cocaine in the clubhouse.
20 Similar to what you heard at the Kingsmen trial, they
21 host dancers and strippers at their clubhouse. There is
22 a report of one woman who I have yet to identify who had
23 a pool cue utilized on her.

24 THE COURT: At the clubhouse?

25 MR. TRIPI: At the clubhouse. And I

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2 hesitated to proffer it because I can't give you more
3 specifics that was reported. Part of the challenge,
4 though, is these young ladies, these dancers, some of
5 them come in from other outside of the country from
6 other states and they have dancer names as opposed to
7 government names. So, there is a challenge in tracking
8 back to whom that occurred. But the report that we had
9 was that a young lady had a pool cue used on her at the
10 Outlaws Buffalo clubhouse, and although we didn't see a
11 pool table there, I didn't mark it, but there is
12 evidence that a pool table used to be there. In other
13 words, the chalk that you use to use, you know, I don't
14 know the terminology, I don't play pool.

15 THE COURT: I know what you mean.

16 MR. TRIPI: So they do have photos, they did
17 photograph that because law enforcement was aware of
18 that reporting and it's interesting to me that you have
19 that type of thing reported and now no pool table
20 exists, but evidence that a pool table used to be there.

21 There is information about overdoses at
22 Pharaoh's, a number of dancers overdosing over time and
23 there is information that at least one of those resulted
24 in a death, and that the Outlaws helped get rid of the
25 body. Law enforcement has dove in a creek located

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2 across from Pharaoh's several times. It's a very
3 difficult area to do a full search of. To date we've
4 found nothing. But those dates came out of Mr. Gerace's
5 mouth regarding who got rid of the body and that will be
6 part of his trial. So, no, I can't tell you that that
7 is Mr. Ermin, but what I am proffering is that Ermin is
8 the boss. It's like the CEO of McDonald's didn't flip
9 the burgers, but he knows the burgers are being flipped.

10 THE COURT: The information of the overdose
11 at Pharaoh's that came out of Mr. Gerace's mouth, in
12 what context?

13 MR. TRIPI: I'm going to be careful, but it
14 was sort of an admission to a witness who we anticipate
15 will testify.

16 THE COURT: Okay. And then tell me how --
17 let me ask it this way. Tell me why I should assess as
18 reliable your report or your proffer that dancers from
19 Pharaoh's were sent to the Outlaws as punishment? I
20 mean, in other words, is there more than one witness who
21 has provided that information? Is there other
22 corroborating proof to support it?

23 MR. TRIPI: There is a witness who reports
24 that. Separately there is a witness that reports Mr.
25 Ermin smashing a dancer's head off of a bar. Separately

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2 there are other dancers who have been there dancing.

3 THE COURT: What do you mean by that?

4 MR. TRIPI: Who have been there dancing,
5 excuse me, I didn't finish my thought, and know that
6 others have used drugs there. There are jail calls that
7 we've recovered from other people who are in jail
8 indicating extreme fear of actually telling the
9 government what was transpiring in that clubhouse.

10 THE COURT: With respect to women?

11 MR. TRIPI: Yes. Yes. It was a woman, a
12 woman on the phone expressing fear. And we believe all
13 of that to be consistent with Crystal Quinn's fears that
14 she expressed in the beginning of her meetings with the
15 FBI and prosecutors. Again, then you, you have that set
16 of facts, you have the posting on the post about how
17 they will treat women. There are, you know, countless
18 photos -- I shouldn't say countless, but several.

19 THE COURT: When you say postings on the
20 post?

21 MR. TRIPI: So I showed it you, I think, at
22 the last appearance.

23 Ms. Champoux, if you know the exhibit I'm
24 talking about.

25 THE COURT: This is, I'm not going to repeat

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2 the word, this is what you read into the record.

3 MR. TRIPI: Correct, yes. Correct, it's
4 vulgar. On the physical post in the clubhouse and other
5 like cleaner copies that were recovered, so I believe
6 you have it marked.

7 In their clubhouse, they basically had like
8 photo albums, countless naked women, various parts of
9 their bodies, things of that nature. Historically, the
10 department, through other prosecutions, associates the
11 Outlaws with prostitution. They also associate them as
12 having employment at places like motorcycle shops, which
13 wouldn't be shocking, strip clubs. And then you look at
14 the Pharaoh's establishment and the managers, the cook
15 and the head manager are members of the Outlaws. What
16 I'm proffering to you, consistent with the activities
17 that occurred at Pharaoh's while he is the manager and
18 Mr. Gerace, who is his close friend and confidant is the
19 owner, I mean, we're talking over, roughly over 100
20 witnesses that went into grand jury, and so it's hard
21 for me to single out in a proffer setting without having
22 it in front of me, over 100 witnesses went into grand
23 jury, double that have been interviewed. There are over
24 200 on the government's witness list that is under seal.
25 And if you go back to the Kingsmen case, I proffered

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2 dozens of bikers in that situation, some of whom did
3 talk about the Outlaws, many other civilian witnesses,
4 so we're talking 300 to plus people over time who have
5 talked generally about how motorcycle clubs behave. How
6 the Outlaws interact with other clubs. How the Outlaws,
7 the position they hold as it relates to other clubs.
8 And then going from the general to the specific, Mr.
9 Ermin's position among these clubs, his level of
10 prominence in the Outlaws. And so that is why, you
11 know, even in the Kingsmen trial, his name was mentioned
12 numerous times. And that is going back now some time
13 2016, '17, '18.

14 So, and you see how he has been traveling
15 internationally for many, many years. And he has risen
16 up through the ranks during that time. And so now, I
17 wouldn't expect him to be the one. Law enforcement
18 wouldn't expect him to be the one in that bar, but he
19 has Mr. Barnes there and he has Mr. Marcaccio and a
20 number of other Outlaws, and that could have gone a
21 different way had the Kingsman acted differently. And
22 so this is how these two are tethered together for
23 purposes of dangerousness.

24 These are high-level members in an
25 organization that historically has been very violent,

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2 has demonstrated on video that they have the propensity
3 to commit violence, and has federal witnesses expressing
4 fear of their life who then, you know, end up dead. And
5 I'm going to go through that timeline, just in case I
6 messed it up before.

7 On March 27, I proffered in Federal Court.
8 In my proffer made it clear, even though I didn't name
9 her, that Crystal Quinn was a federal witness. On April
10 4th, Mr. Ermin --

11 THE COURT: This is a question for you,
12 though, because I did go and look at the docket and her
13 Complaint was dismissed April 6th.

14 MR. TRIPI: Yes. So my proffer outed like,
15 basically, would have outed her as a witness.

16 THE COURT: On March 27?

17 MR. TRIPI: And before that proffer, her
18 Complaint had been adjourned. So the 48(b) date was
19 coming up, I know Judge Schroeder doesn't typically set
20 those, but we were pursuing a pretrial diversion, so he
21 did. And we adjourned that -- I'm going off memory, but
22 I believe this will be borne out by the docket. It was
23 like a Friday where we adjourned her dismissal.

24 THE COURT: Well, let me pull it up, okay?

25 MR. TRIPI: Yes, your Honor. You should see

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2 an adjournment of a dismissal prior to the dismissal.

3 THE COURT: Sandra, can you pull up Crystal
4 Quinn and print off the docket?

5 You indicated that the dismissal occurred
6 before he met with Mr. Gerace.

7 MR. TRIPI: That would be a mistake. The
8 March 24th to March 27th were the very detailed proffers
9 regarding, essentially, she had sent Facebook threats on
10 behalf of Mr. Gerace to a witness, and so that was --
11 and then she started proffering and had reached an
12 agreement to cooperate. That culminated, I think she
13 went in grand jury like March 9th, that culminated,
14 ultimately, in an indictment of Gerace on new witness
15 tampering charges. And so that was 23CR37 was the
16 witness tampering indictment, that technically we moved
17 for detention under. So that is the docket where I'm
18 asking him now to be detained because he was released.
19 Later on, those two cases got joined on government
20 motion. But at that moment in time, he is charged with
21 witness tampering, so my proffer about that information
22 was heavy in all areas, I would submit, but it
23 definitely talked about that scenario. And clearly, Mr.
24 Gerace, would have known full well because the setting
25 was they were together when she sent the messages to the

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2 witness.

3 THE COURT: So there is a text order that
4 was entered March 3, 2023 by Judge Schroeder indicating
5 that the complaint would be dismissed without prejudice
6 pursuant to Rule 48(b) effective April 9, 2023.

7 MR. TRIPI: And I think before that, I think
8 that was on the government motion, your Honor, because
9 her Complaint was, I think, February 1st or thereabouts,
10 and he gives you 30 days. He doesn't set a 48(b). And
11 so I think I filed something under seal asking him to
12 give me some more time.

13 THE COURT: Okay. And there was an order
14 setting conditions of release on March 28th.

15 MR. TRIPI: Yeah.

16 THE COURT: So your point is, Mr. Gerace
17 would have known by virtue of your proffer.

18 MR. TRIPI: March 27th.

19 THE COURT: On March 27th that Ms. Quinn was
20 cooperating against him.

21 MR. TRIPI: Yes. And so then the visit is
22 April 4th, face to face, Ermin and Gerace, and then fast
23 forward a little bit, come June 30th, the trial was
24 supposed to go in June, and it gets adjourned. June
25 30th we're in front of a new district court judge and we

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2 get a new trial date, June 30th. That date was October
3 23rd, so it had been moved from August 14th to October
4 23rd, 2023. Within a week of that, in other words, the
5 government getting a new trial date, July 6th is the
6 second face-to-face meeting with Mr. Ermin and Mr.
7 Gerace. August 1st, Ms. Quinn is found dead under
8 circumstances that indicate that she was intentionally
9 overdosed and it was staged to look like an accident or
10 suicide. So that is the timeline I wanted to clarify
11 when I went back and looked at it, that is the sequence
12 of events.

13 Since that time, there have been
14 communications and meetings between Outlaws and Rare
15 Breed, there have been communications between Ermin and
16 Roncone on a phone that we don't believe we seized, we
17 believe to be a burner phone. We only make that
18 assessment based upon a number observed under "Tommy O"
19 in Mr. Roncone's phone because they are starting to look
20 into his phone, and it's not a number we have accounted
21 for. And that brings us into October where they are
22 communicating. And that is the same month that the FBI
23 are doing search warrants in Wellsville, et cetera.

24 THE COURT: You made a representation at our
25 last appearance that you indicated there have been

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2 reports, I reviewed one source report of an individual
3 who is in an outlying clubhouse who watched Mr. Ermin
4 beat someone up. Do you have any other information
5 about that?

6 MR. TRIPI: It was in the Buffalo Outlaws'
7 clubhouse. It was an individual who, I'm being careful
8 because this individual became an FBI source, and so
9 that individual was in the clubhouse, this was some
10 years ago, and observed Mr. Ermin go out back, beat
11 someone and come back in and sort of act like nothing
12 had happened.

13 THE COURT: And time frame, can you give me?
14 I had asked you the time, do you have a time frame? You
15 said I can follow up with the time frame. If you didn't
16 do it, that's fine.

17 MR. TRIPI: I didn't do it. I can tell you
18 that when I first learned of that source back in the
19 2015, 2016 time frame, we were in -- your Kingsmen case
20 was already charged and we were not at trial yet,
21 though, we were in sort of discovery phase. So I
22 understand I'm ball parking it right now, because I
23 didn't go back and check.

24 THE COURT: Okay.

25 MR. TRIPI: Sorry, I forgot to do that,

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2 Judge.

3 THE COURT: You'd also, at the last
4 appearance, proffered information about a text exchange
5 with somebody who may be cooperating in Milwaukee.

6 MR. TRIPI: Yes, your Honor. What that was
7 was a screen shot that was in Mr. Ermin's phone and it
8 was somebody had texted an individual that so and so was
9 cooperating, you should look into that. And whoever
10 received that text, screen shot it and that screen
11 shot was in Mr. Ermin's phone that was extracted in
12 December of 2019.

13 THE COURT: December of 2019.

14 MR. TRIPI: He was present at the search of
15 Pharaoh's, that is when he was briefly interviewed by
16 Special Agent Burns, and he consented to the search of
17 his phone. They did an extraction and returned his
18 phone to him. And so that phone contains a lot of text
19 messages between he and Mr. Gerace, a lot of various
20 details and information, but among the things that I
21 proffered was that screen shot. And that was in the
22 context of, that was from someone who was supposedly
23 cooperating in Milwaukee. So my point was that that is
24 an indicator like someone in Milwaukee is making sure he
25 knows that someone is a cooperator.

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2 THE COURT: But I had asked you at the time
3 if you had a time frame and you said you could get it.

4 MR. TRIPI: I can get it on a 10-minute
5 break, I'm sorry.

6 THE COURT: Refresh or at least help me
7 understand with respect to the Mr. Barnes, the
8 residences that were referenced. There is the 19
9 Gratton. And that was a residence that was identified
10 by Mr. Cotter as a residence that Mr. Barnes had resided
11 at. That is also the residence where the search was
12 conducted back in March of 2021 of this --

13 MR. TRIPI: PJ Raslawski.

14 THE COURT: Who is the cook at Pharaoh's?

15 MR. TRIPI: Correct.

16 THE COURT: And but there is no suggestion
17 by the government, I don't think, based on your proffer
18 today, that Mr. Barnes was residing there in March of
19 2021. But then you reported that somebody had observed
20 him mowing the lawn there or something like that.

21 MR. TRIPI: Yes. One of the officers who is
22 present in court had observed him mowing the lane at
23 that location. I can try and get a time frame.

24 THE COURT: And Mr. Cotter, as Mr. Tripi is
25 doing this, this came up at Mr. Ermin's hearing about

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2 him mowing the lawn. And what I said to Mr. Tripi is,
3 let's not get into Mr. Barnes when he is not here. So
4 we didn't follow up on it at all.

5 Now I want to ask the question because Mr.
6 Barnes is here.

7 MR. COTTER: I appreciate you letting me
8 know that, Judge.

9 MR. TRIPI: So the mowing of the lawn
10 observation, I'm told, took place in spring or summer of
11 this year, 2023.

12 THE COURT: And then the residence that was
13 being proposed for Mr. Barnes to go reside at is what, I
14 think the government contends, is owned by Mr.
15 Elsaesser.

16 MR. TRIPI: Yes.

17 THE COURT: Not 19 Gratton.

18 MR. TRIPI: No. Mr. Elsaesser who is in the
19 video at the bar you watched. I'm not sure you
20 recognized him.

21 THE COURT: I did. No, he sat through four
22 months of trial, I recognize him.

23 Do you have any other information because it
24 came up during Mr. Roncone's hearing by Mr. Cooper that
25 between -- so you have the early morning hours July 28th

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2 of Ms. Quinn texting these messages where she seems to
3 be both fearful of the so-called bikers and also then
4 thinks Mr. Gogolack is turning on her. And then you
5 have the last human activity occurring on her phone July
6 31 at 6:30 in the evening.

7 MR. TRIPI: That's correct.

8 THE COURT: And she is found dead or her
9 body is reported by Mr. Gogolack on August 1st. Do you
10 have any information about Ms. Quinn's activity between
11 I guess 6:30 in the morning on July 28th and 6:30 in the
12 afternoon on July 31st. Because what Mr. Cooper
13 indicated during Mr. Roncone's hearing, and I guess I
14 didn't fully appreciate this when you were proffering it
15 during Mr. Ermin's hearing, was that after these
16 fearful, let's call them text exchanges, she then had
17 more normal conversations with other individuals,
18 potentially even her mother.

19 MR. TRIPI: Yes, Judge. There is a spike in
20 the fearfulness around those early morning hours of the
21 28th, and then it drops back down. And during that time
22 frame, we know she is with Mr. Gogolack. She is, by
23 that point, her mother, at some point, was able to talk
24 to her, I believe, in that window of time. And there
25 are text messages, I'm not sure if Mr. Cooper went into

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2 them, but where sort of at the tail end of the July 28th
3 incident where Mr. Gogolack is then starting to text her
4 and I'm paraphrasing, but sort of reassuring her.

5 THE COURT: He didn't go into that.

6 MR. TRIPI: Reassure her that, essentially,
7 in sum and substance, he is on her side and so things
8 calm down, and there is less sort of panicked activity,
9 more normal is a better way to put it. But then at some
10 point in that window of time, after the reassuring had
11 occurred, we suggest, believe, the evidence shows and
12 will show at a later court proceeding that he then fed
13 her the Fentanyl that killed her.

14 THE COURT: You indicated at the last, in
15 Mr. Ermin's appearance, that the scene was cleaned.

16 MR. TRIPI: It was manipulated, yes.

17 THE COURT: This is Mr. Gogolack's residence
18 of where he was living?

19 MR. TRIPI: Correct. And Mr. Gogolack
20 started to report a narrative to local law enforcement,
21 a narrative that she was suicidal, essentially, which is
22 a narrative that he had reported to her mother, not too
23 long before calling the police. So in other words --

24 THE COURT: Before he reported that she was
25 dead?

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2 MR. TRIPI: Yes. So basically before he
3 calls 911 and reports her dead, her mother is trying to
4 get ahold of her again, right?

5 THE COURT: Is trying to what?

6 MR. TRIPI: Is trying to get ahold of Ms.
7 Quinn and is getting no responses. And so then the
8 mother pivots and sends a text message to Mr. Gogolack
9 that states, in sum and substance, if somebody doesn't
10 get back to me, I'm going to send the Whales State
11 Police, she makes reference to getting the State Police
12 and get the car back. In the reality if you look at the
13 texts to her daughter, she makes messages that she is
14 concerned about her daughter. But to Mr. Gogolack, it's
15 about the vehicle. And Mr. Gogolack calls her back and
16 says, why didn't you tell me she was suicidal, in sum
17 and substance. And that narrative continues with the
18 local authorities that she was suicidal, which there had
19 not been a scintilla of evidence that she was suicidal.
20 Sure, scared, not suicidal. And that narrative
21 continued all the way back out to Federal Court where
22 Mr. Gerace's attorney stood here two days later and said
23 she killed herself. So, that is the case.

24 THE COURT: Okay.

25 MR. TRIPI: Her official cause of death

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2 wasn't available until into September and that is when
3 we learned that she had 1200 nanograms per milliliter of
4 Fentanyl in her system. The highest that the medical
5 examiner ever seen in his career was 80. And lethal
6 doses have been reported as low as three. So that is
7 how we come up with she had potentially enough Fentanyl
8 in her system to kill 400 people.

9 THE COURT: So when you were showing -- when
10 you started showing the video from Halligan's bar.

11 MR. TRIPI: Yes.

12 THE COURT: Last time, you identified an
13 individual that I don't think you identified today,
14 maybe you did and I missed it. You said his name is
15 Matthew Joseph A/K/A Lucky. You said he works at
16 Pharaoh's or frequents. Maybe you did identify him,
17 that he frequents Pharaoh's a lot.

18 MR. TRIPI: I think that I could have
19 misspoke last time.

20 THE COURT: Well, then you said, maybe I'm
21 getting confused, you said the guy with the goatee, bald
22 head.

23 MR. TRIPI: Spider.

24 THE COURT: That is Spider. But you also
25 said where Mr. Ermin is the manager, Mr. Gerace is the

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2 owner, Mr. Raslawski is the cook who deals drugs, and
3 then you said where Matthew Joseph A/K/A Lucky, so you
4 have four Outlaws that are heavily invested.

5 MR. TRIPI: That is a pivot away from
6 Halligan's and back at Pharaoh's. Lucky is another
7 manager at Pharaoh's.

8 THE COURT: He is?

9 MR. TRIPI: Yes.

10 THE COURT: Because he was in the incident
11 with Mr. Decay in Ohio?

12 MR. TRIPI: Yes, that's correct.

13 THE COURT: But he wasn't in the bar at
14 Halligan's.

15 MR. TRIPI: That's correct.

16 THE COURT: But he is a manager at
17 Pharaoh's?

18 MR. TRIPI: Correct, and a full-patched
19 Outlaw. Just to further it, there is a report not too
20 long ago, essentially, him beating the shit out of a
21 woman at Pharaoh's and that case went nowhere and we're
22 looking into that.

23 THE COURT: That is this Lucky?

24 MR. TRIPI: Yes.

25 THE COURT: Okay. The potential penalties

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2 for the crime that Mr. Ermin is charged with is up to 15
3 years.

4 MR. TRIPI: That's correct.

5 THE COURT: Okay.

6 MR. TRIPI: That law was recently changed.

7 THE COURT: Okay.

8 MR. TRIPI: I believe we calculated his
9 Guidelines based upon the number of firearms. It is in
10 the range of 33 to 41, thereabouts, so I estimate the
11 Guidelines are ballpark of three years.

12 THE COURT: Well, I think there has been a
13 proffer of 41 to 51 months.

14 MR. TRIPI: That was the proffer at the
15 initial detention hearing, 41 to 51.

16 THE COURT: Do you know if any of the
17 weapons found at the clubhouse -- let me put it this
18 way. Any of the items that the government has
19 identified as weapons that were found in the clubhouse
20 were found in the, what I would characterize as the
21 living area.

22 MR. TRIPI: Those other sort of blunt
23 instruments and stuff like that?

24 THE COURT: Right, the padlock.

25 MR. TRIPI: Those were down in the lower

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2 part of the bar. I would add, if you walk in, you're
3 going to pass through the bar area before, so the area
4 that Mr. Barnes walked out of, you're going to go --
5 that is an upstairs. There is no door, so no separate
6 door separating it. So his area, you would walk
7 downstairs and you're going to be in, pass through the
8 bar area to go out the door that he exited. So --

9 THE COURT: When the search warrant was
10 executed?

11 MR. TRIPI: That's correct. And in that
12 trail of items is where his phone is. And, you know,
13 you could draw a line, basically, the path that he would
14 have walked.

15 THE COURT: The only other point I wanted to
16 make is, Mr. Cooper had sent an e-mail to Mr. Cotter and
17 me after the appearance about these urinals that he said
18 he would clarify on the record.

19 MR. TRIPI: Yeah. I think he had proffered
20 that they were marked "clean urine." And a closer
21 inspection of the photos did not confirm that
22 information that they were marked "clean urine." So he
23 wanted to clarify, I believe, that that was erroneous
24 information.

25 THE COURT: All right. I don't think I have

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2 anything else at this point.

3 MR. TRIPI: I'll be done at this point, your
4 Honor. I would just submit that the weight of the
5 evidence, history and characteristics of each offender,
6 nature and circumstances of the offense, and risk of
7 obstruction, all of those things, we think, weigh in
8 favor of detention. Thank you.

9 THE COURT: Thank you, Mr. Tripi.

10 I guess the first question I had, Mr. Cotter
11 and Mr. Muscato, either of you need a break before you
12 proceed?

13 MR. COTTER: Speaking for myself, Judge, I
14 don't intend to be very long.

15 MR. MUSCATO: I'm okay, your Honor. Thank
16 you for asking.

17 THE COURT: Karen, are you okay?
18 Who wants to go first?

19 MR. COTTER: That we haven't discussed.

20 THE COURT: Do you want to talk?

21 MR. COTTER: Apparently, I will, Judge, if
22 that is okay.

23 As I begin, Judge, I do want to remind the
24 Court that the house at 37 Peoria was proposed as a
25 residence for Mr. Barnes has been inspected or

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2 investigated by Pretrial and has apparently passed.

3 THE COURT: Is that correct, Officer McCray?

4 PROBATION: Yes, Judge, that is correct.

5 THE COURT: Even though it's owned by Mr.

6 Elsaesser? I'm probably mispronouncing his name. I

7 guess my question is, does probation make any assessment

8 of that when it decides whether or not a house is

9 suitable?

10 PROBATION: To be honest with you, I don't

11 know that the officer that went out was aware of that,

12 neither was I until today in court.

13 THE COURT: All right. The one thing I

14 wanted to remind you of, as well, Mr. Cotter, you also

15 filed this motion that I didn't want to neglect to

16 address.

17 MR. COTTER: Curiously, Judge, within four

18 hours, deputies at the Orleans County Holding Center

19 brought Gabapentin to Mr. Barnes and he has been given

20 Gabapentin regularly since then -- and he has been given

21 Gabapentin regularly since then.

22 THE COURT: Okay.

23 MR. COTTER: All right. I do want to remind

24 the Court that Mr. Barnes had some pretty major back

25 surgery six weeks ago and does have scheduled follow up

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2 post-surgical appointments scheduled with his surgeon.
3 And I believe the next one is January 4th of 2024.

4 THE COURT: But in terms of your pending
5 motion that was filed at docket four in the MJ case, is
6 there any relief that you're seeking from the Court at
7 this point?

8 MR. COTTER: Well, today is December 27th, I
9 believe it was the 14th that I filed it.

10 THE COURT: Yes, it was.

11 MR. COTTER: So he has -- I believe my
12 request for relief was tri part. And some of it had to
13 do with his personal possessions and belongings so the
14 bills could be made. And some had to do with a CPAP
15 machine. And some had had to do with the medication.
16 And the medication has been addressed without Court
17 intervention. And the CPAP machine has been delivered
18 to the Orleans County Jail and is in use by Mr. Barnes
19 regularly.

20 THE DEFENDANT: Yes.

21 MR. COTTER: That's correct. And so the
22 only thing that would remain out of the requests for
23 relief is the return of his wallet and bank card so
24 bills could be made. I'll happily withdraw that motion
25 should the Court uphold Judge Schroeder, Magistrate

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2 Schroeder's release order.

3 THE COURT: Okay. But if I don't uphold the
4 release order, then you're asking that the government
5 return these items?

6 MR. COTTER: Correct.

7 THE COURT: I guess like a Rule 41 motion.
8 Has there been any discussions with the government about
9 this?

10 MR. COTTER: None at all.

11 THE COURT: Why don't you pursue those
12 discussions with the government, regardless of how I
13 rule on this. And if you are looking for some relief, I
14 think it's, in terms of the return of personal property,
15 I think that is more appropriately addressed to either
16 the assigned magistrate judge or if there is ultimately
17 an indictment, whoever the district judge is. And I
18 don't know if that will be me or somebody else at this
19 point.

20 MR. COTTER: Okay. I'll talk to Mr. Tripi
21 after court.

22 THE COURT: Okay.

23 So just so it's clear, I'm denying without
24 prejudice the motion filed by the defendant at docket
25 four in case No. 23MJ166.

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2 MR. COTTER: Okay. Thank you, Judge.

3 With respect to and offhand, I don't recall
4 if the street is Gratton or Grotten, I know somebody
5 spelled it.

6 THE COURT: Do you know, Mr. Tripi?

7 MR. TRIPI: G-r-a-t-t-o-n, 19 Gratton.

8 MR. COTTER: It's my understanding that
9 there is no lawn there.

10 THE COURT: There is no lawn?

11 MR. COTTER: There is no lawn. It's just
12 gravel. An agent reported that they saw Mr. Barnes
13 mowing the lawn.

14 THE COURT: Well, I don't think there is a
15 dispute that at some point in time he lived there,
16 right?

17 MR. COTTER: That's correct. And I was -- I
18 proffered that to the Court. However, I also want to
19 remind the Court that it was March 2023 that he broke
20 his back. The first surgery was March 23, 2023, and his
21 mobility has been compromised since then, now nine
22 months ago, so I don't think he was cutting the lawn at
23 any rate.

24 THE COURT: Well, I mean, that is one of the
25 questions that I had. Because you're representation to

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2 me was that he had, at least the impression I got, was
3 that he had just recently moved into the clubhouse
4 because he wasn't employed because of the back surgeries
5 that he had undergone. But in the Pretrial Services
6 Report, it's indicates the defendant reported he has
7 resided at the above reported address, which is the
8 Outlaws' clubhouse, for the past year and a half, which
9 is obviously prior to any injury to his back.

10 MR. COTTER: Yeah. I don't know the answer
11 to that, Judge, I could find out.

12 THE COURT: Okay. Officer McCray, is that
13 in fact what Mr. Barnes reported to you?

14 PROBATION: That is what he reported to me.

15 THE COURT: Okay. I'm just bringing it to
16 your attention that there is an apparent inconsistency
17 in that regard.

18 MR. COTTER: Okay. I do, I want to clarify.

19 THE COURT: Let me, before you, as long as I
20 have Officer McCray, it also says right after that, he
21 being meaning Mr. Barnes, denied any firearms or animals
22 within the residence. Is that what was told to you?

23 PROBATION: Yes.

24 THE COURT: Go ahead, Mr. Cotter.

25 MR. COTTER: Just one second, Judge.

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2 I'm sorry, Judge. I thought I had notes.
3 To the best of Mr. Barnes' recollection, he moved to
4 Western New York on September 6, of 2021. And if I
5 stated a different date at a different prior appearance,
6 I apologize, I had no intention of misleading the Court.

7 THE COURT: I didn't think you did. But I
8 think you've indicated 2022 is when he moved here at our
9 last appearance. But thank you for clarifying that.
10 And one of the questions I had, Mr. Cotter, is about
11 your client's employment. Because I know you have
12 indicated that he is a member of --

13 MR. COTTER: The IBEW.

14 THE COURT: Right. And that the reason he
15 wouldn't have recently been employed is because of his
16 back injury. But I noticed in the arrest record that
17 the government has produced from this 2018 arrest, at
18 least it says in there that the defendant was
19 unemployed, so I don't know if you have anything you
20 want to offer to support that, in fact, he has
21 maintained any kind of employment.

22 MR. COTTER: My understanding, Judge, is
23 that Mr. Barnes is a journeyman electrician and works
24 out of union halls. What was going on in 2018 or 2019
25 and in New Hampshire, whether or not he simply decided

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2 to answer a police officer's pedigree question in that
3 fashion, I have no idea. All right? I do understand
4 that inquiries have been made of the union hall in
5 Buffalo, and he has been assured that work is available
6 to him if he is released and once he is physically
7 cleared to return to work medically.

8 And, Judge, I'm not 100 percent positive,
9 but from what I understand, that the day this Crystal
10 Quinn overdosed or died on, there was another individual
11 who died at the same place or near the same place, but I
12 don't believe that the government is making an
13 allegation that there is some sort of causal link
14 between anybody in this courtroom today or any other
15 related cases to that second death that took place
16 temporally close to when Ms. Quinn died and from, I
17 believe, the same source of heroin. Right? It's just
18 something to point out to the Court that there may not
19 necessarily be this connection that the government is
20 searching for. And they certainly make no allegations
21 to the second death being connected to anything.

22 THE COURT: I think what you may be
23 referring to, I think there was some media reports about
24 another overdose that occurred later that day. I'm not
25 sure there was another death.

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2 MR. TRIPI: I'm not aware of any other
3 deaths in that time in the Wellsville area that are
4 Fentanyl related. What seemed, what it did happen after
5 -- Mr. Cotter, if you forgive me, I don't mean to
6 interrupt you -- after Mr. Gogolack called in Ms.
7 Quinn's death, several hours later, and I'm not going to
8 have the time down, he also went to the hospital.

9 THE COURT: Mr. Gogolack?

10 MR. TRIPI: Yeah, there is an individual, a
11 neighbor across the street, called, and Mr. Gogolack
12 went to the hospital. And through additional
13 investigation, we've determined that Mr. Gogolack faked
14 his own overdose later in the day, but he had no
15 Fentanyl in his system.

16 THE COURT: Wouldn't -- and I apologize, Mr.
17 Cotter, wouldn't 400 times the level of Fentanyl that
18 would normally cause an overdose or a death, I mean,
19 wouldn't that contaminate anybody that was even near it?

20 MR. TRIPI: Not if it's ingested. It's in
21 her body. In other words, her body would protect
22 somebody else from --

23 THE COURT: But it has to get into her body.

24 MR. TRIPI: Yeah. She is ingesting the
25 drugs. I mean, near her body there is a shotgun shell,

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2 next to her body, not too far away. There is other --
3 I'm never go to have to prove to a jury exactly how she
4 was forced to take that much Fentanyl.

5 THE COURT: All right. Go ahead, Mr.
6 Cotter.

7 MR. COTTER: I will apologize to the Court.
8 My notes say that another person overdosed on the same
9 day. I didn't mean to say death. All right.

10 THE COURT: Okay.

11 MR. COTTER: Going back to the urine, Judge,
12 I was --

13 THE COURT: I'm not particularly persuaded
14 by the urine, to be honest with you. By the
15 government's proffer about the urine, I think your
16 explanation that there was medicine that he is taking
17 and he recently had back surgery.

18 MR. COTTER: It makes sense, doesn't it.

19 THE COURT: It does make sense to me. I
20 wouldn't spend a lot of time on that.

21 MR. COTTER: Then I'm done, but all of the
22 Government's proffer so far as it relates to Mr. Barnes
23 has been based on speculation and supposition.

24 THE COURT: Not the video evidence.

25 MR. COTTER: Right. But, okay, Judge, so

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2 the video from New Hampshire is from five years ago.

3 THE COURT: But it is reflective of somebody
4 engaging in violent acts as a member of the Outlaw
5 Motorcycle Club based on the government's proffer.

6 MR. COTTER: Based on the government's
7 proffer, Judge. Based on the government's proffer, we
8 also don't know what we're missing. Okay? We all
9 watched the same video. The video is of a bank of
10 screens. Somebody has decided or whomever was moving
11 the cursor, decided which ones to show and what ones not
12 to show. We don't know what the instigation was that
13 led Mr. Barnes to exit the club and seemingly punch
14 somebody in the face. Okay. Whether or not words were
15 exchanged, whether there was retaliation, doesn't make
16 sense that somebody exited that club. Have you ever --
17 I'm assuming that when the Court was in grade school,
18 the phrase of "meet me at the flag pole at 3 o'clock"
19 may have some resonance.

20 THE COURT: No, but that's okay.

21 MR. COTTER: Sometimes people fight. We
22 don't know what instigated that. It certainly doesn't
23 appear sane for Mr. Barnes to walk out of an
24 establishment, walk up to the first person he sees and
25 punch him in the face without some sort of underlying

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2 altercation or instigation taking place. What we do
3 know is that, out of all of the cameras that were
4 available on that computer screen, we had a very select
5 -- choices were made as to what would be distributed or
6 displayed to this Court. So I'm not quite sure what
7 weight we can give that aside from the fact that it
8 occurred several years ago and in another state. And if
9 Mr. Barnes, Judge, was a person prone to such fits of
10 wanton violence, I would submit to the Court that
11 somewhere between 1991 or I believe was his first arrest
12 and where we stand today almost in 2024, there would be
13 other arrests. But we have his one from the military
14 when he was a very young man. We have this incident in
15 New Hampshire, and then we have where we are today. I
16 submit that is not a very lengthy criminal record.

17 All right. And if he were such a violent
18 individual, there would be other arrests in other
19 locations, all right? But I do want to, I guess, point
20 out again that Mr. Barnes has post-surgical medical
21 appointments coming up. He moves laborious. If you
22 noticed when he stands or leaves the table, it's
23 difficult for him to get into the chair and to get out
24 of the chair. He needs physical therapy. The
25 conditions that judge or Magistrate Judge Schroeder

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2 imposed are more than acceptable to Mr. Barnes and me.
3 He has a house that has been approved by pretrial
4 services. And he would like to be able to go home and
5 have some sort of semblance. He could get physical
6 therapy, he can go back to work. I have nothing more.

7 THE COURT: All right. Thank you, Mr.
8 Cotter.

9 Officer McCray, does probation have any
10 different opinion than what is reflected in the Pretrial
11 Services Report?

12 PROBATION: No, Judge, not at this time.

13 THE COURT: Okay. Go ahead, whenever you're
14 ready.

15 MR. MUSCATO: I'm ready, thank you.

16 So, your Honor, my client, obviously, by way
17 of a Criminal Complaint, is charged with 922(g)(3). And
18 in that complaint they basically say he possessed
19 firearms with recreational amount of marijuana.
20 Actually, your Honor, if the matter was to even go to
21 trial and that was the proof what they put in that
22 information, I'm not quite sure it would even get to the
23 jury because they just simply say they found
24 recreational amounts of marijuana in the house and not
25 what his use might have been or anything of that nature.

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2 And, quite frankly, all of the guns that you were shown
3 were, mostly shotguns, and I think some long rifles,
4 thirty odd thirties but all used for hunting. And the
5 Court will recall from having read the Pretrial Services
6 Report that most of my client's family was from
7 Pennsylvania. Pennsylvania are hunters, and that is
8 where he got these firearms from. There were a number
9 of different knives, things of that nature. All of
10 them, quite frankly, legally possessed. Nothing illegal
11 about any of the firearms he had. And additionally, not
12 any place in all of these hours that we've been here has
13 there been any indication that these guns, these knives
14 that were found in my client's house, the crossbow, any
15 of that was used in any kind of illegal activity. Not
16 in any of these so-called fights that they represent my
17 client was in, nothing, none of these guns were used
18 illegally.

19 And you know what is actually interesting,
20 and I found this out after I was in front of Judge
21 Schroeder when I was looking around, there is actually a
22 Fifth Circuit decision that was rendered in August of
23 this year, I downloaded it off PACER, government *U.S. v.*
24 *Daniels*, fact pattern where a defendant was found with a
25 firearm in his car and a small amount of marijuana. He

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2 was convicted after trial, but the Fifth Circuit said
3 applying *Brewin*, and with all due respect, I appreciate
4 *Brewin* is probably overextended a little bit, but in any
5 respects, they did the two-step process, and they said
6 we're going to declare this section 922(g)(3)
7 unconstitutional in light of that. But they also said,
8 your Honor, we're going to limit it to the fact patterns
9 of our case. And that is okay with us because the fact
10 pattern in that case was a car that was going down the
11 road, pulled over, searched by the officers, found a
12 pistol, I believe, and recreational marijuana.

13 So here you have, even, a very weak felony
14 Complaint, and the Fifth Circuit in New Orleans, I
15 believe that is where the Fifth Circuit is located,
16 saying under the *Brewin* decision, that kind of scenario
17 is illegal. Now my client, I had some marijuana in the
18 house. There was no meth, no cocaine, no anything else,
19 no hard drugs, no ecstasy, nothing. And all they found
20 were a bunch of legally possessed firearm the and cash.
21 And by the way, I don't know what he told probation, or
22 excuse me, pretrial services, he says he doesn't
23 remember discussing a bank account. But that cash, that
24 is what he has saved over all of these years. That was
25 his savings. And I believe that the pictures do not

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2 show the wrappers that were on these -- this cash. But
3 that is what he had in his house.

4 THE COURT: So he doesn't operate -- you're
5 representing that he just is a cash individual, so to
6 speak, he doesn't use a bank account?

7 MR. MUSCATO: I'm not going to say to you.
8 There is some indication that he had an Alden Bank
9 Account. But, yes, I'm going to indicate to the Court
10 that he saves his cash and that was their life savings.
11 And in any respect, my client has lived a pretty good
12 life considering everything that he has had to go
13 through.

14 When he was a younger man, he was married
15 before, your Honor, and he was involved in a motorcycle
16 accident through no fault of his own. He had his first
17 wife on the back. And she was killed, and, of course,
18 as you've observed, he lost his leg in that accident.
19 And he has been forced to wear a prosthetic device ever
20 since. He went through whatever kind of treatment he
21 had to go through. And I read into the record last
22 Tuesday in Rochester that he was scheduled for further
23 surgery for his prostate on, I believe, the 21st or
24 something of that nature, and, unfortunately, was not
25 able to have it. But he lives in a great deal of

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2 discomfort and would very much like to be able to get
3 this surgery done.

4 But here is a man who, as a result of this
5 accident, loss of his legs, goes and ends up on Social
6 Security Disability, and which would be appropriate for
7 somebody who is disabled, however degree. But he went
8 and got a job, your Honor, and he started at Pharaoh's
9 many years before he became the manager, cleaning the
10 toilets and every low menial job in there and worked
11 himself up to becoming a manager. And I believe he was
12 a manager for approximately 10 years. And he ultimately
13 was making enough money to get off SSD, Social Security
14 Disability. Now is that the mind of a criminal of an
15 outlaw gang or something of that nature? No. It's a
16 man of a person who wants to better himself, who is law
17 abiding and who felt that working was far more critical
18 in his structured life than receiving SSD, which there
19 is nothing wrong with it, but he wanted to be employed
20 and wanted to be active. And he has done a good job.

21 And then you have the fact that he doesn't
22 have any criminal record, none whatsoever. He is 54
23 years old. I appreciate there has been some
24 discrepancies in the Pretrial Services Report, but they
25 have talked to his wife, and no domestic issues. If

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2 there was police reports, they would have found it and
3 certainly the government would have had it. Nothing.
4 No criminal record, your Honor. No domestic violence.
5 His wife would say he is a good husband. And they
6 raised these incidences, this one about 2010. I
7 represented him in that. And so I think I can say to
8 the Court, I'll tell you what actually happened. He
9 didn't do anything. He did not punch anybody. He was
10 there and saw what happened. And the girl that claims
11 she was struck, he picked up out of out of the flowers
12 and put her back up on the feet. And there were other
13 people involved there that he knew, I'm not about to say
14 what happened to those people, but my client's charges
15 resulted in a non-criminal disposition. And he did
16 nothing in the way of punching this guy or participate
17 in this. And this other thing, behind the -- I don't
18 know what this other thing is behind the Outlaws
19 clubhouse. If he is out back, I got a sneaking
20 suspicion that there is no credible evidence that he
21 attacked anybody else, and there is no credible evidence
22 any place, anywhere, after all of these hours that he
23 was engaged in any other activity that dealt with him
24 attacking anybody. In fact, the record and his wife
25 support the fact that he is anything but that. So I've

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2 already discussed, you know, pretty much the criteria
3 the Court might look at under 3441, but the government
4 wants you to detain him because he is dangerous and he
5 might obstruct the prosecution here and things of that
6 nature. So let me just spend a few minutes on that, if
7 I might, your Honor. Because, frankly, all of the cases
8 that you're aware of dealt with RICO charges, and so
9 they spent a great deal of time trying to label him as
10 the leader of whatever. One minute he is international,
11 and the next minute he is national. And, quite frankly,
12 it's kind of irrelevant. I'm not going to say to the
13 Court that my client doesn't have some sort of
14 leadership position there.

15 But it's quite interesting here, your Honor.
16 First of all, the very beginning of five hours ago, Mr.
17 Tripi showed you exhibit 1-J of which he wanted you to
18 believe that all of the brothers were giving him a bunch
19 of money because he is the big shot in the Outlaws. But
20 the truth of the matter, and I believe it was exhibit
21 1-J, which the Court has, "I hope all is well with you
22 and you are recovering well."

23 And then, this is from Australia. The
24 individual goes on to talk about, I'll send you some
25 patches and things of that nature. "Thank you for what

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2 you do, Brother." There was not a date on this, but
3 there was some other exhibits in there, your Honor, and
4 when you look at them, you'll see they are all dated
5 April 20th, 2020. April 20th, 2020. That is important
6 because my client was in Kalida Health Fillmore Suburban
7 with Covid from March 27, 2020 through April 22, 2020.
8 He had a bill for \$241,399 because he spent two weeks on
9 a ventilator. Now recall, your Honor, if you ended up
10 on a ventilator what usually happened to you? So back
11 in the first month of Covid, if you were on a
12 ventilator, they were always talking about probably not
13 going to make it. And he survived. And his club, the
14 Outlaws, these people that they want you to believe is
15 some sort of a criminal enterprise, sent him money, sent
16 his family money, \$1,000 there, \$500 there, so Stacey
17 could pay the bills while her husband is laying on a
18 ventilator in a hospital. Everyone is thinking he is
19 going to die. That is what they want you to believe
20 otherwise.

21 Now, the truth of the matter is they show
22 you this, they show you this exhibit here, 23, that they
23 bring in here today. And on the very first page of it
24 it says, October 15th, 2021, special agents from
25 Homeland Security have begun this investigation of the

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2 Outlaws for laundering money, narcotics, and I saw
3 someplace in here prostitution. Now, your Honor, I
4 appreciate that Mr. Tripi is only attaching those
5 e-mails that he felt would show that my client is the
6 leader of the Outlaws. And I'm not necessarily going to
7 dispute that John Ermin is not in some sort of
8 leadership role. But the very first one which he wants
9 you to think is something nefarious, I guess, is January
10 1, 2021. January 1, 2021, in which he is wishing
11 everybody a good new year. And he said, "My year was
12 pretty bad last year." That was the year he was in
13 Kalida Millard Fillmore with Covid. I would think that
14 that is exactly how he would address everybody. And he
15 goes on to tell them, "Have a nice new year. We're
16 making progress here. We've got a good organization,
17 let's see it grow." The next one, "Happy Easter," that
18 is what he is telling them there. The next one there is
19 a funeral to attend. If that is what gets you in
20 trouble to a federal courtroom because you're wishing
21 somebody a happy new year, happy Easter, going to a
22 funeral, and the one he didn't read to you, which is the
23 one, the next page, your Honor, which is do not ban
24 anyone from use, LHI. Love, honor, respect. Love,
25 honor and respect. That is what that means. So Tommy O

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2 or John Ermin is a new kind of leader, quite frankly.
3 They talked about Taco Bowman and this Rosga and all
4 these other guys were in trouble, had these records, had
5 prison time, engaged in murders, all that other stuff.
6 Maybe they are aging out, quite frankly. But my client,
7 quite frankly, is the president or they want you to
8 believe is the president, or somebody in the leadership
9 position, who has no record and wants to see the club do
10 well.

11 And, Judge, I find it disingenuous and,
12 quite frankly, that would say that, well, and you ask
13 the question of Mr. Tripi, what do they have that he has
14 done at Pharaoh's that would be, my words not yours, of
15 a nefarious condition.

16 Mr. Tripi is extremely capable. We've
17 listened to him for five hours. It is very clear, maybe
18 longer, it's very clear that he does not want my client
19 out of jail. Don't you think -- I'm not buying this
20 idea that they are shorthanded in the U.S. Attorney's
21 Office or any of that kind of stuff. If they had
22 anything solid with respect to John Ermin, they would
23 have indicted him, no question about it. Now he has to
24 deal with strippers and people that are in the bar that
25 are drunk and all these kinds of things that goes on in

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2 these clubs. They have hundreds of witnesses that he
3 has told you about. And what does Mr. Tripi say, Judge?
4 We had one witness over here that says maybe he brought
5 in a Lortab. And we have another witness over here who
6 says maybe he pushed somebody's head on the bar. That's
7 it. That is it, because that is it. And the one thing
8 that I found interesting was when Agent Burns was in
9 there, and he just told you that a little while ago, and
10 took his phone from 2019 and is scrolling through it,
11 that is all they found was some message that he took a
12 screen shot of, someone out of Milwaukee, nothing
13 between Mr. Gerace and my client we got to launder money
14 and push these drugs and get these women over there,
15 there is nothing there because there is nothing there.
16 And after all this time, that is all we heard. The only
17 real haggard words we heard was this is circumstantial,
18 that's it. And that doesn't even amount to being
19 circumstantial.

20 Now they want you to believe that somehow
21 the Outlaws are connected to the death of this young
22 lady in Wellsville, Quinn. And here is the best part
23 about it. Ms. Quinn was a drug addict. She was
24 addicted to it. That's sad. And then Mr. Tripi says to
25 you, in response to the question, well, she got back

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2 into it a little bit. A little bit of marijuana and a
3 little bit of cocaine. People that are addicted to
4 drugs don't get into it a little bit, they are back in.
5 And where is she hanging out down in Wellsville, going
6 to poker games with a bunch of people. If it's true
7 that she is worried about bikers, why is she down there
8 and not up here when her mother calls her, according to
9 what I understand this, and I'm listening to this, I'm a
10 father not a mother, if my daughter calls and says, "I'm
11 worried about the bikers," I'm going to say, "you get
12 back here right now or I'm coming back to get you."
13 I'll only say to you, I sincerely believe that none of
14 this really had anything to do at all, except for the
15 fact that she got mixed up in drugs with her friend from
16 high school, Mr. Gogolack. And the circumstances under
17 which she died, how tragic, your Honor, but Mr.
18 Gogolack, if he is going to give her drugs to kill her,
19 why would he stay in bed with her all night long? Why
20 would he do it in his home with her there? And then the
21 next morning he decides he is going to cover her up and
22 move stuff around and things of that nature? It makes
23 absolutely no sense. And there is absolutely nothing at
24 all, except my client visiting Mr. Gerace in the jail,
25 but that would be consistent with the fact that he has

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2 been the manager and Mr. Gerace is still his boss, even
3 though he is in jail.

4 Now, I would just indicate to you that he
5 has told me that if you should release him and allow him
6 to continue working, which Judge Schroeder had
7 permitted, that he doesn't need to deal with Mr. Gerace,
8 he can deal with, I believe the young woman's name is
9 Noel. So he doesn't have to have any contact with Mr.
10 Gerace.

11 Your Honor, they have had my client's phone
12 now and computer for the better part of a few weeks,
13 maybe two, two and a half weeks. And we have listened
14 to Mr. Tripi, very, very capably present a proffer to
15 you for over five hours. It would have been -- if
16 something was relevant to these proceedings, it would
17 have popped up in this Court. There is nothing in any
18 of, in anything here, that connects the Outlaws or my
19 client in any way shape or form to the death of this
20 young lady. And, you know, even though this isn't a
21 RICO case, you know, that even if you're in a position
22 of leadership, leadership alone is not necessarily
23 enough if you're not an active participant, even though
24 cases that do review it, talk in terms of some really
25 bad stuff. Not that the death of a young lady isn't

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2 significant, I am not trying to downplay that, but there
3 is nothing in this to connect it other than might be,
4 could be, should be or something of that nature. There
5 is nothing solid here to connect my client.

6 I don't know what the purpose of the
7 Hillside is to show, there is no crime there. I
8 appreciate that maybe they went in there and intimidated
9 somebody. The best person was the young lady behind the
10 bar who is telling them "Get out of here, I want you to
11 out of here." Obviously she wasn't afraid of them. But
12 in any respect, your Honor, there is nothing that I saw
13 that indicated any significance there, although they do
14 want you to believe that somehow John Ermin knew about
15 it. And there is absolutely nothing in the record that
16 John Ermin knew about anything. The only thing that is
17 in the record is that John Ermin is, quite frankly,
18 involved in making sure that things are done properly,
19 that he lives a good life, pays his bills, and,
20 unfortunately, finds himself charged with a crime where,
21 as you well know in state courts, possession of
22 marijuana is legal. Doesn't justify or diminish the
23 charge that he has against him, but, on the other hand,
24 I think that is why the Fifth Circuit ruled it's
25 unconstitutional. Thank you.

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2 Do you have any questions that I can answer
3 for you, your Honor?

4 THE COURT: Do you want to comment at all,
5 you don't have to, on the amount of legal paperwork
6 found at your client's residence, including, like, for
7 instance, Mr. Decay's paperwork?

8 MR. MUSCATO: Yes, I do. And thank you, I
9 forgot to bring that up. Look, they are clearly -- Mr.
10 Ermin has been a member of the Outlaws and he has a
11 brotherhood going on here. And, quite frankly, the good
12 result was when he was in the hospital and they sent him
13 money. So I'm just going to say to you, there is
14 nothing wrong with following cases of people that are
15 Outlaws. And I know my 16 years of parochial education,
16 I'm going to be in trouble here. I'm willing to bet
17 that the Pope, either in his home or the Vatican, has
18 files of all of the people that are priests that have
19 gotten themselves in trouble.

20 THE COURT: You really want to make that
21 analogy?

22 MR. MUSCATO: No, I don't. But, really, I
23 would say it's something equivalent to that. But you
24 know, there are a few people here that got themselves in
25 trouble. I don't know how many people are in the

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2 Outlaws, a few thousand, perhaps. I have no idea. They
3 have chapters all over the place, every state in the
4 country, all of -- in the United States, all of these
5 within the world, all of these different countries, they
6 have thousands of Outlaws. And we're talking a few
7 people that have gotten themselves in trouble at least
8 during the time that they claim John Ermin has been the
9 president. So they kind of represent one percent of the
10 one percent. Now let's just hypothetically take a twist
11 on this, and let's say, I want to do a good job here,
12 I'm 54 years old, I don't want to have any problems with
13 law enforcement. We do some good things. We have
14 fundraisers. We are bikers, we enjoy doing that. So
15 why not follow the people that are getting in trouble
16 and making sure that we know who these trouble makers
17 are. So that is exactly how I look at that. He had
18 these documents that he followed for whatever reason.
19 Well, they want you to believe they are racists that
20 they are Aryan, but then yet in the same paragraph, Mr.
21 Tripi says to you, well, he went to Brazil, which I
22 didn't see that in any of the flights he went to, and he
23 went to Mexico. I don't know any white supremacist that
24 really would be favorable to people in Mexico and people
25 in Brazil. And then I was looking at the video of that

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2 bar fight in wherever it was. And I think the guy that
3 was with Mr. Barnes either was Black or some other Latin
4 nationality. So, Judge, there is no exclusion of
5 anybody that wants to be a member of the Outlaws. They
6 are not racist -- and even though --

7 THE COURT: I mean, why would you have this
8 kind of symbolism in your clubhouse if you're not
9 racist. And people don't get locked up because they are
10 racist. Obviously people don't get detained pending
11 trial because they are racist. But you're making an
12 argument to me that this isn't an organization with, I
13 think you could characterize, its philosophies that are
14 troubling based on the symbolism.

15 MR. MUSCATO: Absolutely, absolutely. They
16 are absolutely troubling. And I'm not trying to condone
17 that kind of thing. You know, last night I was watching
18 the news and I saw the protestors in, I believe, New
19 York City, they were marching around calling the people
20 from Israel Nazis. And they were holding up these
21 symbolism. You know, your Honor, it is a First
22 Amendment right. It is silly in my mind. I certainly
23 would agree with you. And, obviously, I don't believe
24 that that is the kind of thing that I would want to have
25 in my home, but it still is a First Amendment right

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2 if --

3 THE COURT: I don't disagree with you about
4 that, but to suggest that isn't reflective of racism,
5 I'm having a hard time.

6 MR. MUSCATO: I didn't mean that. I didn't
7 mean it wasn't reflective of racism. I meant that the
8 actions of the Outlaws speak louder than that because
9 they've opened up charters in Mexico, there was some
10 evidence in Brazil, they have one in Japan, they have
11 them in almost every country, so they accept, within the
12 Outlaws, people from every walks of life. I did not
13 mean, and I apologize to imply that it wasn't racist,
14 that the Nazi symbol is absolutely abhorrent, quite
15 frankly.

16 THE COURT: All right. Anything else?

17 MR. MUSCATO: No, thank you.

18 THE COURT: All right. Thank you very much.

19 Officer McCray, is Probation's opinion any
20 different than what is reflected in the Pretrial
21 Services Report?

22 PROBATION: No, Judge.

23 THE COURT: Even though there is
24 inconsistencies between what has been proffered here in
25 terms of the evidence and what Mr. Ermin reportedly told

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2 you?

3 PROBATION: That's correct.

4 THE COURT: Doesn't change Probation's
5 opinion?

6 PROBATION: No, Judge.

7 THE COURT: So, in other words, somebody is
8 interviewed by you by probation and denies any
9 international travel at all and then there is proof
10 that, in fact, that individual has traveled somewhat
11 extensively internationally, that doesn't alter
12 Probation's opinion?

13 PROBATION: It is concerning, but ultimately
14 does not change our recommendation.

15 THE COURT: Okay. Mr. Tripi?

16 MR. TRIPI: Can I briefly respond to a few
17 points that were just raised?

18 THE COURT: Okay.

19 MR. TRIPI: I'll keep it short. I know
20 you've heard that before.

21 MR. COTTER: Could we be the timers, though?

22 MR. TRIPI: Sure. Judge, you asked me about
23 that screen shot that I referenced earlier in terms of
24 whether it was in terms of a rat in Wisconsin.

25 THE COURT: Milwaukee. Well Milwaukee is in

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2 Wisconsin.

3 MR. TRIPI: It's from his phone and blurry,
4 and it's from a female. The date of the screen shot, in
5 other words, the caption in the either e-mail or text
6 message is August 23, 2017, at 2:10 p.m. The create
7 date in the phone is August 31, 2017, so I believe that
8 is when he would have screen shot it to capture the
9 image.

10 THE COURT: Okay.

11 MR. TRIPI: It says "Outlaws Rat," then it
12 has the name of an individual and then it says "this guy
13 is an informant for Wisconsin FBI and DEA and has been
14 for eleven years, dry snitch. Sits at meetings then
15 meets with his handlers. You should check it out." So
16 that was something that got forwarded to Mr. Ermin that
17 he screen shot.

18 As to the reference that he is a hunter, FBI
19 Special Agent Brian Burns checked with DEC investigators
20 and they indicated, they explained to him, in Mr.
21 Ermin's career, so he does have a hunting license, he
22 has not reported killing any deer, bear or turkeys.
23 You're required to report those things and there was
24 none.

25 THE COURT: Turkeys.

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2 MR. TRIPI: Yes, bear, deer or turkeys. And
3 he has not ever reported killing a deer, bear or turkey
4 in New York. So we submit that the cadre of weapons is
5 really for the preparedness of for use in the Outlaws
6 Motorcycle Club. He is charged with 922(g)(3). Now, he
7 admitted recreational use of marijuana. The statute
8 says "unlawful use of controlled substance." Therefore
9 he admitted an element we would need to prove. It is
10 unlawful to possess firearms and be an unlawful user of
11 a Schedule I controlled substance, period, end of story.
12 So there can be no argument that he was in lawful
13 possession of these firearms when he has that admitted
14 status.

15 Now, Ms. Champoux did correct me because a
16 moment ago I told the Court --

17 THE COURT: One of elements you have to
18 prove is that the defendant knew he was an unlawful user
19 of controlled substance at the time he possessed the
20 firearms. I think there is an argument, given the
21 absolute chaotic nature of state law versus federal law,
22 you know, I mean, I don't think that is a slam dunk with
23 any kind of attempt by the government to prove that
24 charge.

25 MR. TRIPI: Well, I would submit that --

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2 THE COURT: With marijuana.

3 MR. TRIPI: I would submit there is also the
4 THC gummies, Judge. Your Honor or some other Judge will
5 be instructing on federal law, there will be an
6 instruction that a jury would need to follow federal
7 law. Jurors are assumed to follow the law unless a jury
8 were to nullify and disregard the legal instructions
9 that were provided, that we're dealing with federal law,
10 jury nullification would be --

11 THE COURT: Look it, I don't want to get in
12 a dispute with you about this. But one of the elements
13 is that he is an unlawful user of the drug. So that
14 that is of a matter of federal law. But the other
15 element is that he knew he was an unlawful user. I
16 think that intent element aspect is a much more
17 difficult burden for the government to establish given
18 the state of the law with respect to the possession of
19 marijuana and state law versus federal law. And, I
20 mean, the president, didn't he just pardon everybody
21 that possesses marijuana?

22 MR. TRIPI: It may be an issue for trial. I
23 ultimately think we would convict him and I think the
24 charges would be sustained. Obviously, we wouldn't
25 charge him otherwise. But I see your Honor's point in

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2 making that observation, but I do think that when you
3 look at things like he has never reported killing an
4 animal and he claims to be a hunter --

5 THE COURT: What do you mean never reported?

6 MR. TRIPI: Never reported killing any
7 animal.

8 THE COURT: Deer, bear or turkeys.

9 MR. TRIPI: And look it, I don't think --

10 THE COURT: The government is not moving to
11 detain Mr. Ermin because of the 922(g) charge.

12 MR. TRIPI: You beat me to it. This is a 19
13 year old kid who is not an Outlaw Motorcycle Club
14 national president, we're probably not moving for
15 detention. That is why the Court needs to make an
16 individual assessment. But he is not that 19-year-old
17 who hunts with his dad and smokes some weed. He is
18 something much, much different than that. And I
19 submitted it to you last time and I submit it this time,
20 he is, by position, one of the most dangerous criminals
21 that this Court has ever come across.

22 THE COURT: And tell me why conditions
23 couldn't be put in place to protect against those risks?

24 MR. TRIPI: Can I do that at the end? I
25 will certainly hit that.

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2 THE COURT: Yes.

3 MR. TRIPI: Ms. Champoux pointed out item
4 No. 7 is not a long gun, I'll mark this on the fly.
5 We'll pull it up on the screen. It's not a hard copy,
6 we'll mark it as exhibit 25. We'll get copies to
7 everybody. This is a firearm, item No. 7, that was
8 recovered inside the residence. I need to do more
9 looking into that particular firearm, it clearly isn't a
10 long gun and wasn't in the photo I showed you earlier.
11 This is item 7 in Mr. Ermin's residence. It's a
12 handgun. Whether or not it's an antique or something,
13 obviously, it is a handgun. As to it being his life
14 savings, et cetera, et cetera, Judge, I proffered it
15 last time, I showed you the photos, Outlaws from all
16 over the country are sending him money. A lot of people
17 got Covid, not a lot of them got envelopes full of cash.
18 I'll leave it at that.

19 He admits he is the manager of Pharaoh's for
20 ten years. That puts him right in the heart of the time
21 frame that is alleged in the Gerace indictment as it
22 relates to sex trafficking and the drug-involved
23 premises. Yeah, subordinates PJ Raslawski sold cocaine
24 and drugs right from the kitchen area. There was
25 distribution happening throughout that premises. He

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2 gets off SSD and that was posited to you as some
3 magnanimous move on his part. No, we did a search
4 warrant in December of 2019, and then he got off because
5 we recovered 140 boxes, I think. Of records.

6 THE COURT: So where was the search warrant?

7 MR. TRIPI: At Pharaoh's. And we recovered
8 dozens and dozens of boxes of information.

9 THE COURT: So, in other words, your
10 understanding is that he stopped receiving Social
11 Security Disability payments after December of 2019?

12 MR. TRIPI: Yes, that is my understanding
13 and belief. So there is a seizure and then there, I
14 think, in civil law --

15 THE COURT: I guess I had been led to
16 believe, and I'm not saying Mr. Muscato said this, I was
17 under the impression that I got off Social Security
18 Disability and then started working at Pharaoh's
19 cleaning toilets and gradually worked his way up.

20 MR. TRIPI: I believe that the timing,
21 unless Mr. Muscato can proffer something different and
22 produce records, there was a search warrant at Pharaoh's
23 and I believe he gets off after that. But unlike the
24 government's -- unlike the government, the defense
25 proffer, either proffer, has not been supported by a

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2 single --

3 THE COURT: They don't have any burden of
4 proof.

5 MR. TRIPI: I understand that. But their
6 proffering as well is my point. And I think the
7 government has come with some receipts for its proffer.

8 THE COURT: Do you have any information on
9 the kind of salary he makes at Pharaoh's?

10 MR. TRIPI: It's a very cash business, your
11 Honor. I don't know his salary. We have not gotten the
12 tax disclosure orders and things of that nature to see
13 what he would be reporting. So I couldn't proffer that
14 as I stand here. But I do know that our information is
15 that Mr. Ermin and Mr. Gerace filled the ATM machine, so
16 if you think about how easy it would be to launder money
17 by filling your own ATM machine.

18 THE COURT: In other words, there is an ATM
19 machine at Pharaoh's?

20 MR. TRIPI: Yes. They fill it with cash and
21 individuals take cash out to buy drinks and dances at
22 Pharaoh's and the money is clean.

23 THE COURT: Is the ATM machine hooked to
24 some bank?

25 MR. TRIPI: I know that they have an ATM

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2 machine and they fill it with their own cash and that is
3 something he even acknowledged to the FBI.

4 THE COURT: I've never heard of that before
5 where you have an ATM machine that isn't hooked to some
6 bank somewhere, but that is your understanding.

7 MR. TRIPI: My understanding, and my
8 information is that they use their own money.

9 THE COURT: How is an somebody putting in an
10 ATM card and withdrawing money from their bank account
11 that it's got to be registered with their bank, right?

12 MR. TRIPI: I don't think that that means
13 the bank has to come fill.

14 THE COURT: No, I guess maybe not.

15 MR. TRIPI: Right.

16 THE COURT: But there has to be some
17 electronic transaction.

18 MR. TRIPI: For the person putting in their
19 card, not necessarily from the cash that is coming out
20 of the machine.

21 Going back to the non-criminal disposition
22 of the assault, I would posit that from Mr. Muscato's
23 proffer, it sounds like other Outlaws maybe took
24 different charges. I would just ask the Court to
25 compare what happened in Ohio when Mr. Decay took,

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2 essentially, responsibility for the unlawful items
3 seized in that vehicle and contrast that with the
4 disposition of the assault. It further proves the point
5 of his status as it relates to these other Outlaws.

6 There was a point made that there is no RICO
7 charges here, but, as I proffered to the Court before,
8 there was a search warrant where, among the statutes
9 that a magistrate said there is probable cause to search
10 for, involved Ms. Quinn's death, and RICO statutes. So
11 this Complaint, I don't think it's a stretch to say is
12 only the document that brings us into court. The Court
13 has to look at the whole picture. And a different judge
14 in this building has said probable cause exists that
15 you're going to find evidence of racketeering activity,
16 Crystal Quinn's death, drug activity and other statutes.
17 We certainly found firearms and certainly found
18 enterprise evidence. We certainly found a lot of
19 devices that are being analyzed and are going to take
20 some time.

21 Distinction that was attempted to be drawn
22 between Mr. Ermin and Mr. Bowman, you've seen it
23 already, I'm not going to pull the photos up again, he
24 is wearing a "Free Taco" shirt in one of the images, a
25 much younger version of Mr. Ermin. And then he has,

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2 essentially, in 2023, a shine to Taco Bowman, who is
3 convicted of multiple RICO murders. So that is their
4 God, that is who they emulate that is that should tell
5 the Court a lot. And there were many texts, between Mr.
6 Ermin and Gerace in the phone, some of those, again,
7 refer to Taco Bowman in a loving way and his funeral. I
8 don't know where the information about Ms. Quinn being a
9 drug addict comes from necessarily. I don't think we
10 proffered her being a heroin or Fentanyl addict
11 whatsoever. In fact, she was not that type of drug
12 user. So I don't know where that basis of knowledge is.
13 I don't know where the basis of knowledge is that why
14 Gogolack would sit in bed with her. I didn't hear a
15 government attorney proffer that. So I don't know what
16 that basis of knowledge would be or why that would be
17 proffered to the Court.

18 The incident in the Hillside bar, that
19 certainly was threatening behavior, and under 18 U.S.
20 Code, 1959 threats in aid of racketeering are punishable
21 and so what you have is a group of Outlaws defending
22 their patch, threatening, clearly, a Kingsmen, and that
23 could be chargeable as a threat in aid of racketeering
24 under 18 U.S.C. 1959. And there is video evidence of
25 it. Paperwork found again, the letters are from former

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2 national presidents like Rosga saying "can't wait to see
3 Ermin and Barnes," and I never proffered he traveled to
4 Brazil. And on the note of why they expand to Mexico
5 and Brazil and according to the Department of Justice,
6 the Outlaws partner with transnational criminal
7 investigation organizations. Now if an organization is
8 involved in drug trafficking and firearm trafficking and
9 other unlawful activities, it might be helpful to have a
10 footprint in Mexico and South America, which are source
11 areas for drugs flowing into this country.

12 So as to the notion of why any conditions
13 are not going to be satisfactory as to Mr. Barnes or Mr.
14 Ermin, I think nothing speaks more clearly than of them
15 sitting in Mr. Gerace's backyard when he was on
16 conditions, more extraneous conditions than Probation is
17 recommending. This is labor day 2022.

18 Ms. Champoux, can we pull that up?

19 It's basically Mr. Ermin at a table full of
20 people who are all Outlaws, including Mr. Barnes,
21 several of whom, including Mr. Benson again, who were at
22 that Hilltop incident. So Mr. Ermin, Mr. Barnes.

23 Do we have another image of it? I zoomed
24 in. In the background, I believe you'll see a little
25 bit of Corey Benson there, potentially. He is

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2 definitely there. These are screen shots from video,
3 your Honor, just so the Court is aware. And so Mr.
4 Barnes, a felon, is in Mr. Gerace's backyard. I'm not
5 denigrating probation, but he has members of a national
6 and international organized crime syndicate in his
7 backyard while he is on probation. All of the
8 face-to-face communicating that needs to happen in that
9 type of scenario, can happen. Probation can't prevent
10 any of that. Not a lick of it. They are not geared for
11 it, it is not their job.

12 THE COURT: Was Mr. Gerace on any kind of
13 electronic monitoring?

14 MR. TRIPI: Yes, at various times. He has
15 been on curfew.

16 THE COURT: During that outing?

17 MR. TRIPI: Yes, yes. And what happens,
18 when the government asks for it, probation, they don't
19 turn over, the GPS. We have to get sources and get
20 people placed in backyard areas of people who are on
21 probation and that takes time and people are terrified
22 and they don't want to do things like that. And
23 witnesses, why there isn't this charge or that charge or
24 this case already, because a lot of people sit in front
25 of us and they are like Crystal Quinn, they are

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2 terrified of them for a good reason. So that is why
3 there are no conditions. And you know where it's a lot
4 harder for them? They can still do it from jail and I'm
5 sure they will try if you detain them, but the place
6 where their phone calls are monitored is jail. The
7 place where their visits are monitored is jail. That is
8 how we know Mr. Ermin visited Gerace. Only after he was
9 detained. Those face-to-face meetings. That is how
10 Bowman, Bowman operated the organization from Federal
11 prison for a period of time in face-to-face meetings.
12 And I'm not trying to be disrespectful, and I'm not
13 trying to be disrespectful, and they are professionals
14 in circumventing the law. That is what they do. They
15 will figure around any condition that this Court sets.
16 They will figure out ways to operate their organization
17 from jail, but it will be this much harder for them, and
18 so we think they should be detained. They are dangerous
19 to the community. They can go anywhere in the world.
20 They are a flight risk and we think they should be
21 detained.

22 Thank you, Judge.

23 THE COURT: Thank you, Mr. Tripi.

24 Anything else Mr. Muscato or Mr. Cotter?

25 MR. COTTER: No.

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2 MR. MUSCATO: I don't want to leave the
3 Court with the wrong impression with respect to my
4 client's Social Security Disability.

5 THE COURT: Right.

6 MR. MUSCATO: When he initially started at
7 Pharaoh's, he was working menial job there and I believe
8 he made about \$10 an hour, which would not have knocked
9 him off of SSD. When he became a manager, and there is
10 some income reference in his pretrial service report, I
11 don't know when he started making whatever would put him
12 over the limit, but that is when he applied and got off
13 of it. So there was a period of time working at
14 Pharaoh's that he did also collect that Social Security
15 Disability.

16 THE COURT: Okay, thank you. All right. I
17 know everybody would like me to issue a decision right
18 now. I've got a lot I need to think about. We've just
19 spent, as Mr. Muscato kept pointing out, hearing from
20 the government for several hours. So I'm not going to
21 make a decision from the bench. I'm going to issue
22 written decisions. I will do that as promptly as
23 possible. And on the other hand, I'm going to reserve
24 decision. Thank you very much, everyone.

25 MR. TRIPI: Thank you, your Honor.

* * *

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
of the record of proceedings in the above-entitled
matter.

S/ Karen J. Clark, RPR

Official Court Reporter